

REFLECTIONS

UPON A

Treasonable Opinion,

Industriously promoted,

Against SIGNING the

National Association :

A N D

The Entering into it prov'd to
be the Duty of all the Subjects of this
KINGDOM.

Hoc quidem perspicuum est, eos ad imperandum deligi solitos, quorum de justitia magna esset opinio multitudinis ; adjuncto verò, ut iidem etiam prudentes haberentur : nihil erat quod homines his auctoribus non posse consequi se arbitrentur Civ. de Of. lib. 2.

L O N D O N,

Printed and Sold by E. Whitlock
near Stationers-Hall. 1696.

HARVARD COLLEGE LIBRARY

DEXTER FUND

May 21 1927

To His Excellency CHARLES
Duke of SHREWSBURY,
one of the Lords Justices of
England, and one of His Ma-
jesty's Principal Secretaries
of State, &c.

May it please your Excellency.

SINCE among the many subjects of just Praise,
which make up your Excellency's distinction,
it is not the least, that the true Religion, and
Loyalty, are known to have been chosen with a
Judgment properly your own; my ambition
could not carry me to a fitter Patron for Truths, which
are to encounter a strong Pre-possession, in Men taught
to object novelty against this Revolution: tho' with as
little cause of triumph, as the Papists have for their que-
stion, where was the Protestant Church before Luther?

As your Excellency's wise and vigorous dis-
charge, of Offices of the highest Trust and Consequence, un-
der our only rightful Sovereign, King WILLIAM, revives to France the noted Terrors in the name of
Talbot; permit me from thence to take an Omen of Suc-
cess, against Arguments supported by the French In-
terest, and Power, more than by any colour of reason.

Yet, they who oppose the Right of the present Go-
vernment, having pretended to seeming Authorities;

The Epistle Dedicatory.

I have used that method, which I hope may be proper for their conviction: giving a short view of what, upon the various Exigencies of the Publick, in all Ages of this Monarchy, has been the uniform Judgment, and regular Practice, of Conventions of the States, and Parliaments, of this Kingdom; in concurrence with several glorious Preservers of the English Liberties.

But, that I may use an Authority, sufficient in it self to justify our present Settlement; I beg leave to appeal to your Excellency's early and eminent Example: which will weigh more, with Persons acquainted with so illustrious a Character, than any Argument from past Times.

And yet, what I here offer, being for the most part, the Result of the Collective Wisdom of the Nation; may not be wholly undeserving of your Excellency's Patronage: nor can I apprehend, that you will refuse these Fundamental Truths, the benefit of being recommended to the World under so Great a Name: which, tho' it will set my faults in the clearer light; if your Excellency shall be thought to bear with 'em, cannot but moderate the Censures, against

Your Excellency's most devoted

humble Servant,

W. Atwood.

REFLECTIONS

UPON A

Treasonable Opinion, &c.

THE Enemies of the Peace of these Realms having handed about a Paper, as the Opinion of a certain *florid Gentleman* of the long Robe, eminent for making *New Treasons*; and whose Authority is said to have prevailed with several to refuse Signing the *Association* for the defence of His Majesty's Sacred Person, and *Rightful Authority*; I shall offer what I conceive a sufficient Antidote to the Poyson he would spread, with all his *affected softness*.

The words of the Opinion, as they have occur'd to me, are these:

By the Statute of Hen. 7. the Subjects are Indemnified in taking an Oath, or Fighting for a King de Facto: But the Association is not within the Statute, but an Overt Act of Treason against the King de Jure, and Punishable as such when he shall be restored. *The Opinion.*

In refuting the pernicious Errors contained in this Opinion, I shall evince,

First, That according to the best Authorities of them, who suppose that there may be a King *de Jure*, as distinguished from a King in *Fact*; the Right of the supposed King *de Jure* is not such, as makes any Act against him to be Treason; nor is he King, or has any Right against the King in Possession, or his Issue.

A

Secondly,

Secondly, That an *Association* for the Defence of the *King's Person and Right*, is within the purview of the Stat. 11 H. 7. and that as plainly as an Oath of Allegiance.

Thirdly, That it is not supposed or implied in that Act, that there was or might be a *King de Jure*, while another was King in *Fact*; but that according to that Act, the King for the time being, is the only *Rightful King*.

Fourthly, That the Statute 11 H. 7. is not introductory of any new Law in this matter.

Fifthly, That his Present Majesty is the only *King de Jure*; and that the late King neither is, nor of Right ought to be, King.

Sixthly, That according to this Gentleman's own Law, he is Guilty of High-Treason against our Sovereign Lord the King.

No Treason against any King but the Regnant, nor has any other Person Right against him or his Issue.
3 Inst. F. 7.

1. The Lord Coke, upon the Statute of Treason 25 E. 3. referring in the Margin to the Statute 11 H. 7. says,

' This is to be understood of a *King in Possession* of the Crown, and Kingdom: For if there be a *King Regnant* in Possession, altho' he be *Rex de Facto*, and not *de Jure*, yet he is *Seignior le Roy* within the purview of this Statute; and the other, who hath the Right, and is *out of Possession*, is not within this Act.

Sir Mathew Hale says what in substance agrees with the Lord Coke.

(a) Hales's Pleas of the Crown, p. 11.

' A (a) King, says he, speaking of the Statute 25 E. 3. *de Facto*, and not *de Jure*, is a King within that Act; and Treason against him is punishable, tho' the right Heir gets the Crown.

Indeed, both those Great Men seem to suppose, or admit, that there might be one who had, or at some time or other might have, a *sort of Right*, notwithstanding another's being so *fully King*, that a Conspiracy to Kill, or Depose him, would be Treason.

But it is to be considered,

1. That the Lord Coke does not suppose that there may be a *King de Jure*, while another is King in *Fact*; unless this

this supposition is warranted by the Statute 11 H. 7. which, as I shall prove, it is not.

2. The Statute, which in both their Judgments regards only the *King Regnant*, makes it Treason to Conspire the Death of the King's (b) *Eldest Son*, or to violate his *Eldest Daughter*; for the last of which, the Lord Coke (c) assigns this Reason, That for default of Issue Male, the only is Inheritable to the Crown.

So that the supposed King *de Jure* appears to be barred, not only by the Possession of the King in Fact, but even by that Right which is Vested in his Son or Daughter, before either of them have Possession.

And, indeed, That Right which ordinarily would descend to the Eldest Son of the *King Regnant*, is truly explanatory of all that will be found to have belonged to one, who since E. 4. of the elder branch of the Royal Stock, got Possession, has often been call'd King *de Jure*; tho', as will appear, in a sense very different from the Modern vulgar Notion: Nor does the Judgment even of E. the 4th's own Parliament, in the least favour the *late King*: however if it did, later Parliaments in the time of H. 7. have taken away all colour from such pretences.

That the Eldest Son even of the most Rightful *Regnant King*, was not King upon the Death of his Father, without a Parliamentary Settlement of the Crown upon him before his Fathers Death; nor with it, till the *States* of the Kingdom had actually received and recognized such Son, will appear beyond contradiction: And that the Eldest Son's Right was only a Right to be *declared King*, unless he was unfit to Reign, or the exigencies of the Publick required the advancing some other Person of the *Royal Family*.

If a deserving Person was kept back, or one so judged by his own Party, or the Nation, when he prevailed, the least Complement they could make him was, that of *Right*, he ought to have been King, before he was King; but farther they never extended their Transports of Loyalty, nor ever Authoritatively declared, That he had such a Right as made him King, while another possessed the Throne: And till he got Possession, it was never declared that he had Right. Nor does the setting one aside, before his coming to Possession, or after, make any difference in the Nature of the Right in question.

(b) Nota, In the Act 1 H. 7. restoring H. 6. of the younger House, this Eldest Son Edward, who died in his life time, is called Prince of Wales. Rot. Parl. 1 H. 7. N. 16.
(c) 3 l. ff.

And I shall put it beyond Controversie, that whenever a worthy Person of the Saxon *Royal Family*, especially of that branch, which for some Successions had been settled as the *Regnant Family*, was solemnly recognized by the *States of the Kingdom*, upon the Death, or *disability*, of a Person who stood forwarder in the Royal Line; the Person so recognized became King *de jure*, and no other Person had any manner of Right, unless such as was in *Abeyance*, or in the Clouds; and, indeed, no where, till Possession brought it to Light and Being.

Proof of the 2d
and 3d General
Heads, Stat.
11. H. 7. c. 1.

3. Fully to shew this Gentleman his mistakes, upon the Statute 11 H. 7. it will be requisite to transcribe the whole; which is as follows.

‘ The King our Sovereign Lord, calling to remembrance the Duty of Allegiance of his Subjects of this his Realm, and that by reason of the same, they are bound to serve their Prince and Sovereign Lord for the time being, in his Wars, for the Defence of him, and the Land, against every Rebellion, Power and Might, reared against him, and with him, to enter and abide in Service in Battle, if case so require: That for the same Service, what Fortune ever fall by chance in the same Battle, against the Mind and Will of the Prince, as in this Land, some time passed, hath been seen, that it is not reasonable, but against all Laws, Reason, and good Conscience, that the said Subjects going with their Sovereign Lord in Wars, attending upon him in his Person, or being in other places by his Commandment within this Land, or without, any thing should leese or forfeit for doing their true Duty and Service of Allegiance. It be therefore Ordained, Enacted and Established, by the King our Sovereign Lord, by the Advice and Assent of the Lords Spiritual and Temporal, and Commons, in this present Parliament Assembled, and by the Authority of the same, That from henceforth, no manner of Person or Persons, whatsoever he or they be, that attend upon the King and Sovereign Lord of this Land for the time being, in his Person, and do him true and faithful Service of Allegiance in the same, or be in other places, by his Commandment, in the Wars within this Land, or without; that for the said deed and true Duty of Allegiance, he or they be in no wise
‘ Convict

‘ Convict or Attaint of High-Treason, or of other Offences
 ‘ for that Cause, by Act of Parliament, or otherwise by any
 ‘ Proces of Law, whereby he or any of them shall *now* for-
 ‘ feit Life, Lands, Tenements, Rents, Possessions, Heredita-
 ‘ ments, Goods, Charals, or any other things; but to be for
 ‘ that Deed and Service utterly discharged of any Vexation,
 ‘ Trouble, or Loss. And if any Act or Acts, or other Proces
 ‘ of the Law hereafter thereupon for the same happen to be
 ‘ made contrary to this Ordinance, that then that Act or Acts,
 ‘ or other Proces of Law whatsoever they shall be, stand and
 ‘ be utterly void. Provided always that no Person or Per-
 ‘ sons shall take any Benefit or Advantage by this Act, which
 ‘ shall hereafter decline from his, or their *said Allegiance*.
 Here ’tis observable.

1st. That whereas *this Gentleman* absurdly supposes, that
 it is Treason to engage to fight against one whom one may
 lawfully kill; and that one may enter into a contrary Al-
 legiance, but may not do any *voluntary act of Allegiance*;
 it is evident by the Words, that if Swearing Allegiance is
 safe, so are all voluntary Acts of Allegiance: for the Swearing
 is not expressly provided for by that Act, or any otherwise
 than as it is a part of the Duty and Service of Allegiance to
 the *Sovereign Lord*: but if Associating for the Defence of the
 King’s Person and Right, be part of the Allegiance due;
 then that is as much provided for as the Oath is: and con-
 sequently this Gentleman must grant, that the Statute 11 H. 7.
 indemnifies the present *Associators*. That this is part of the Al-
 legiance due, appears by the Common-Law Oath of Allegi-
 ance affirmed in the Laws of W. 1. and continued down
 to this day in Substance and Obligation: according to which, *vid. Leges W. 1.*
 all the Freemen of the whole Kingdom are to affirm *c. 52. de fide*
 with ‘ a League [or Association] and Oath, that within and ‘ obsequio er-
 ‘ without the whole Kingdom of England, they will be faith- *84 Regem.*
 ‘ ful to their Lord the King; preserve his Lands and Honors
 ‘ with all fidelity, together with his Person; and defend them
 ‘ against Enemies and Strangers.

And in an other Chapter of that Law, after Provision,
 that all Freemen shall enjoy their Estates, as *had been before* Cap. 38.
enacted and granted in a Common-Council of the whole Kingdom,
 it adds,

‘ We

' We also enact and firmly enjoyn, that all Freemen of
' the whole Kingdom be *sworn Brethren* [or Associators] to
' defend our Monarchy, and *our Kingdom*, according to their
' Strength and Faculties, and manfully keep the Peace, and
' preserve the *Dignity of our Crown entire*: and constantly to
' maintain Right, and just Judgment *by all means*, according
' to their power, without fraud, and without delay.

What is this but an *Association* to defend *the King and King-
dom*, against any Person whatever; and by consequence,
to declare that the King for the time being, is the only *Right-
ful King*? Since his Person, Crown, and Dignity is to be pre-
served by all means in their Power.

This part of the Common-Law is affirmed by the Sta-
tute 11 H. 7. declaring it *the Duty of Allegiance to defend the
King, and Land, against every Power and Might*: and therefore
as well against Pretenders to Title as others.

2. This Act, expressly indemnifies for voluntary Acts of
Allegiance, *against the mind and will of the Prince*.

*Proof of the 3d.
General Head.*

3. It can by no means have been intended or implied by
that Statute, that there was, or could be, any other King
besides the King *for the time being*: For,

1. To take it in that sense, would be to make the Statute
fight against it self; and not only to admit that he were but
[a] King not [the] King; but to require the Subjects to
fight, for, and against one and the same Person.

4. H. 7. And his Parliament could not be thought to ad-
mit, that he was an *Usurper*, or a King contrary to Law, or
Right. But H. 7. certainly intended to provide for the in-
dempnity of those that should pay Allegiance to him, as well
as of those that should pay Allegiance to future Kings for
the time being. And indeed upon some of the Words it may
seem doubtful whether the enacting part was intended to
reach beyond his time; and whether any other Sovereign
Lord for the time being was intended, but he who was at
that time. But if in relation to the King, whose Parliament
passed this Act, the King *for the time being* was supposed
to be the only Lawful and *Rightful King*; it must be so taken
in relation to all other Kings *for the time being*: if either the
enacting Part or the Preamble extend to 'em.

5: If this Act should carry a plain implication, that some other besides *the King for the time being*, was *the King of Right*; this would be so far from being for the Security of *the King for the time being*, (as must have been then intended as well as the indemnity of his Subjects,) that it must needs have the like effect with their Discourses, who will have it, that the present Government is not *Rightful*, but yet that a sort of *Allegiance* is due to it, because of *God's Authority*, tho' contrary to *Right*.

Whenever these Men speak out, it appears, that they allow no Authority to *the King for the time being*, but what is derived from the Tacit, or implied Consent, of their *King of Right*.

But this *Jesuitism* was not thought of at the making of that Statute.

6. I desire to know what Person besides *H. 7.* was so much as imagined to be *Rightful King*, or *Queen*, of *England*, when that Act was made? However, whether it can be thought, that in the Judgment of that Parliament, any Person besides *H. 7.* had Right to the Crown; after a former Parliament had '*Ordained, Established, and Enacted, that the Inheritance of the Crown of England and France, should be, stand, and remain, in King H. 7. and the Heirs of his Body, and in no other Person?*' That they held this Settlement to have been duely and rightfully made, and that without any relation to his marrying the supposed Heiress to the Crown, appears by three other Acts of the same Parliament. One of which attaints * *R. 3.* for traiterously conspiring against their Sovereign Leige Lord *H. 7.* Another † indemnifies Men for Trespass or taking Goods, in maintenance of the Title of *H. 7.* for the time that his Banner was displayed against Richard late Duke of Gloucester, Usurper of the Realm. || Another goes farther, and indemnifies them who came from beyond-Sea with *H. 7.* or were in Sanctuary, or Hidell, for his Quarrel, and Title; and speaks of the Battle against his Enemies, in recovering and obtaining his just Title and Right to his Realm of England.

Wherein *H. 7.*'s Right, and *R. 3.*'s Usurpation consisted, shall afterwards be considered.

7. When the Parliament 11 H. 7. speaks only of the *King*, or *Prince*, or *Sovereign Lord for the time being*, without giving any discription whereby it should be known who is [the Prince] unless what relates particularly to H. 7. It must be presumed that no King is intended, but he that was the *Sovereign*, or *Leige Lord*, in the Eye and Reputation of Law: which as appears by the Case of R. 3. an Usurper, continuing so, was not then taken to be. But who ever was in the Possession of the Throne without Usurpation, was always lawful and *rightful King*.

8. It cannot be thought the Parliament 11 H. 7. would have made an Act directly contrary to three others of the same Reign; but they would have expressly repealed the former Acts, or have offered some reason to palliate or colour their Proceedings to the contrary.

But take the Statute of 11 H. 7. in this Lawyers Sense, (only with an Exception that as to the Matter in Question it was a Declaratory Law, as the words plainly shew, and it will farther appear) and it is evident that the Statutes against R. 3. and indemnifying them that acted for H. 7. before the displaying his Banner, as well as after, while R. 3. was in Possession of the Throne, were contrary to this Lawyer's Sense of the Statute 11 H. 7. according to which, they who assisted H. 7. must have acted contrary to their Duty of Allegiance to the *King for the time being*. Wherefore it plainly follows, that R. 3. was not King for the time being, according to the true meaning of the Statute 11 H. 7. and yet H. 6. who was of the younger House, was in his time the only King *for the time being*, in the Judgment of that very Parliament which supposes R. 3. not to have been so; as appears by their reversing the Attainder of H. 6. and declaring the Act of Attainder, to have been *contrary to the Allegiance* of the Subject, *against all right wiseness, honour, nature, and duty, inordinate, seditious, and slanderous*; and reversing the Attainders of others for their *true and faithful Allegiance and Service* to Hen. 6. and yet those Attainders were in a *Parliament* of a King by many supposed to be the only Person that had Right to be King, and that after his being formally recognized by the States, and then in Possession of the Power of the Kingdom.

Ret. Parl.
1 H. 7. n. 16.
Restitutio H. 6.

Obj.

But

Obj. But it may be objected, if the Act 11 H.7. was made only to indemnifie them that paid Allegiance to *Rightful Kings*, there was no manner of need of it.

Ans. 1. Many needless Statutes have been made in affirmance of the Common-Law, out of abundant caution.

2. It could not be needless to obviate mens fears, upon pretences which might be set up against the King *for the time being*; by removing the supposal that Allegiance could be due to any body else.

3. The enacting part extends to indemnifie Men, for what they out of Loyalty should do in time of War, *against the mind and will of the Prince*: for which the caution was but reasonable.

Effectually to prove, that the Judgment of *Hen. 7th* Parliament, That there could be but one *Rightful King* at a time, except where they were Partners in Power; is according to the fix'd and known Constitution of this Monarchy; and that this manifests *His present Majesty* to be our only *lawful* and *rightful* Sovereign Lord; and that the *late King* neither, is, nor of *Right*, ought to be King; I shall as briefly as well as I can, give an Abstract of what will appear to any Man, who shall with me carefully compare Records, Histories, Law-Books, Charters, and Authentick Manuscripts, from before the fixation of the Monarchy downwards.

The most antient uncontested Authority of this kind, which is allowed us even by the *Scotch* Writers, who think themselves concerned to blemish our Antiquities, is the *Venerable Bede*, who died in the year 735. He, speaking of the coming of the *Picts* into the Northern Parts of *Britanny*, says, The *Scotch* gave them Wives, on condition that when any Controversie arose, they should *chuse themselves a King of the Female Stock* of Kings, rather than of the *Male*.

Whereby it appears what was his Judgment of the Successions, where they have seemed most fond of an *Inherent Right of Birth*.

But as to *England*, where a King has left three Sons,

(a) *Bede* calls them all *Heirs*.

3d. Proof of the 4th. and 5th. General Heads.

Bede Lib. 1. cap. 1. Ubires veniret in dubium magis de faminea regum prosapia, quam de masculina si eligerent.

(a) *Lib. 5. c. 24. An. 725.*

(b) *Lib. 4. c. 11.*

(c) *Ib. c. 12.*

*Sufceperunt
Subreguli reg-
num gentis, &
divisum inter
se tenerunt
annis circiter
decem.*

(d) *An. 730.*

*Cart. Orig. in
Bib. Cor.*

Accordingly, he more than once mentions Brothers reigning together as (b) *Sigbard* and *Frede* among the *East-Saxons*; while (c) the *West-Saxon Kingdom* was govern'd by several petty Kings, in distinct Divisions. These Kings probably at that time were Tributary or Feudatory Kings, under the *Mercian Kingdom*: for in the year (d) 730. I find King *Aerilbald*, styles himself not only King of the *Mercians*, but also of all the Counties which by the general name are call'd *South-Angles*, subscribing King of *Britanny*. And in the same year I find an *Offa*, who styles himself King of the *Mercians*, and also of the other Nations where ever round about. By reason of the Inheritance of Crowns belonging to several Sons of Kings, the Kings were so numerous that *Bede* mentions two Brothers Crown'd Kings even of the *Ile of Wight*. But when any were Constituted Kings to the setting aside all the old *Regnant Family* of that particular Kingdom, the Persons so constituted were according (e) to *Bede*, *Strangers*, or *doubtful*, by way of distinction from *Lawful Kings*. And yet all the Kings of the several Kingdoms were descended from *Woden*, from which *Common-Stock* they all took their Qualifications for an *Election*, as afterwards the *West-Saxon Kings* did from *Cerdic*, then from *Ina*, and after that from *Egbert*.

But generally, I take it, regard was had to that part or branch of *Woden's Family*, which was the *regnant Family* within the particular Kingdom, where one of that branch was advanced; according to that Charter of an *Offa*, where he is styled (f) *King of the Mercians*, descended from the *Mercian Royal Stock*.

About which time I find two Kings (g) of *Kent*, *Sigereð*, and *Eadberht*, governing in severalty. These 'tis likely were Brothers, but *Eadberht*, who became King of all *Kent*, upon *Sigereð's* death, or amotion, was (h) *constituted King and Prince by the whole Countie*. This was above 60 years before the Foundation of the Monarchy was laid (i) by the *West-Saxon King Ina*. Tho' most of the Moderns, and many of the Ancients, lay it as late as *Egbert's* time; the Confessors Laws received and sworn to by *William the I.* and following Kings, say of *Ina*, (k) he 'was elected King throughout *England*, and first obtained

(e) *Bede Lib. 4.
c. 26. Circiter
an. 685. Per
aliquod spati-
um reges dubii,
vel externi dis-
perdiderunt, do-
nec legitimus
Rex Visfred
&c.*

(f) *Mon. 1. vol.
f. 28. An. 764.*

(g) *Ib. col. 1.
An. 762.
Ib. col. 2.
An. 761.*

(h) *Cart. Orig.
in Bib. Cor.*

(i) *An. 699.*

(k) *Leges Sui
Edw. Lamb.
Arch. & Bib.
Cot. sub. effig.
Claud. D.*

the

'the Monarchy since the coming of the English into Britanny.

His qualification for an Election, the Saxon (k) Cronicle places in a Descent from Cerdic. But (l) Malmibury assures us he was advanced rather for his Merit, than his being of the Successive or Inheritable Family, and that from him (m) to Brictic, the Kings were far out of the Royal Line.

That Brictic was truly elected, appears not only in his bare qualification from the (n) Stock of Cerdic; but as he was immediate Successor to Kenwolf: (o) elected upon the like qualification; and in whose Reign it was (p) ordained, in a National and Legantine Council, 'that no man suffer the assent of Wicked men to prevail, but that Kings be lawfully elected, by the Priests and Elders of the People: where 'tis manifest, that lawfully does not limit the Election to any other Rule than what follows in that Law, viz. to avoid electing Persons born in Adultery or Incest. The Person lawfully Elected, is there called Heir of the Country. Where [Heir] is plainly used in the Sense both of the (q) Civil, and of, our Common (r) Law, for the Person that comes duely to the Inheritance: in this sense all that have been elected Kings, have been held to succeed by Hereditary Right. And thus in numbers of Charters in the Saxon Times, and after, Private Inheritances are granted to Men, to leave to what Heir they please; to the Church and its Sacred Heirs; and to the Barons, or Citizens of London, and their Heirs.

To Brictic the first West-Saxon King, after the Peoples Right to Elect, had been declared by National Authority, succeeded Egbert, who derived after several degrees past'd from Ingild, Ina's Brother.

It may well be thought, that he was Elected with a Consent no less full and formal, than was held essential to his Grants of Lands, one of which was (s) with the License and Consent of all his Nation, and the unanimity of all the Great men.

Egbert was alive in the year 838. tho' Historians generally suppose him to have died two years before. His Sons (t)

C 2

Domitian A. 8. Sax. & Lat. which shows him to have been King of Kent, Surrey, and Suffex.

(k) Cron. Sax. nuper ed. Cujus prosapia oriunda est Cerdico.

(l) Malmib. 7. Quam successore sobolis prosapia.

(m) Non parum linea Regia stirpis exoritur verum.

(n) Cron. Sax. p. 16. & 61.

(o) Cron. Sax. & Bromton col. 770. super populum & regnum elegerunt.

(p) Spelm. Conc. 1. vol. f. 291, 292.

(q) Concil. Calchuthense Legatum & Anglicanum An. 787.

(r) Heres Patria. (q) Fund. Const. 1. part. f. 80.

(s) Bracton l. 2. c. 29. An. 800. vel Potius 801.

(t) Cart. in Regist. Ab. Bib. Cor. Claud. B. Cum licentia & consensu totius gentis nostre, &c.

(u) Few Historians take notice of him vid. tamen Bib. Cor.

(v) Ethelstan

King of Kent, Surrey, and Suffex.

(x) Evid. Ec.
Cam. inter
Decem script.
col. 2220.

(y) Bib. Cor.
Julius D. 2.
f. 125. a

(z) Vid. Cart.
Orig. in Bib.
Cor. cod. An.
Egbert & E-
thelwolf ading
together, both
Kings.

(a) Mon. 1. vol.
f. 195. An.
843. Welding
calle Britone.

(b) Asser Men.
ending with the
life of King
Alfred f. 156.

(c) Nic. Gloc.
in Bib. Cor.

Caligula. A.
Ending with
the life of E-
thelwolf.

(d) Rituale in
Bib. Cor. Co-
ronas Ethelredi
& H. 1.

(e) Pictav. de
Gestis ejus
f. 205.

(f) An. 855.

(g) Bib. Cor.
Tiber. B. Albas
Floriacensis.

(h) Examq.
Sax. nobili pro-
fapia oriundus,
&c. Omnium
comprovincia-
lium.

Ethelstan the Eldest, and *Ethelwolf*, were Kings in his life time : As I might prove by several Charters, but shall here mention but two ; one in the year (*) 827. where an *Ethelstan* subscribes as *Monarch of all Britanny* ; (y) an other An. 836. where *Egbert* grants with the Consent of his Son *Ethelwolf*, *King of Kent*.

In the year (z) 838. *Ethelwolf* succeeded *Egbert* in the Kingdom of *West-Saxony*, by a manifest *Election*, his eldest Brother *Ethelstan* being then alive, and continuing (a) the *Monarch* or chief King of all *Britanny*.

Besides the Evidences above, that there was not at that time such a fix'd rule of descent in the *West-Saxon* Royal Family, as made the Kings eldest Son to be King, or to have a certain and indefesible Right to be King, may appear by the Law or Custom of that Kingdom mentioned by (b) *Asser*, and (c) *Nicolas of Gloster*, and others ; not to suffer the King's Wife to be called *Queen*, or to sit near her Husband : which seems to have occasioned the *Ritual* for the Consecrating the Wife in (d) *consortium regalis thori*, for the consortship of the Royal Bed. Till she was so Consecrated, which was to be in a *Convention* of the *States*, or coming from it, she had no more right to the Kings Bed than a *Concubine*. Of this doubtless *W. r.* was aware, when he (e) expressed a desire to have his *Wife Crowned with him*. Certain, it is that the Sons of Kings begotten on *Concubines*, after they had been elected or adopted by the *States*, were always held to have succeeded as *Rightfully*, and to have been as legitimate Heirs, as the Sons begotten in *Wedlock*; the Mother's being *Queen*, and by consequence the legitimization of the issue, and capacity to inherit the *Crown*, having depended upon the will of the *States*.

But that in *Ethelwolf's* time, the word *Elected* was duely applied to *English* Kings, and upon what qualification, may farther appear by an Author of the *Saxon* time, who speaking of *Eastengle*, where *St. Edmund* was Crown'd King, (f) two or three years before *Ethelwolf's* death, says, (g) 'Over this Province reigned the most holy *Eadmund*, descended from the (b) *Noble Stock of the Ancient Saxons*, &c. 'who coming from Kings his Ancestors, being eminent 'for his virtue, with the unanimous favour of all the People of
the

* the Province, is not so much elected, by reason of * the Succession, or Inheritance of the Stock, as he is forced to reign over them. (i) *Ex generis Successione.*

With in this time *Eschelbald*, *Eschelwolf's* eldest Son reigned in his Father's life time, and retained *West-Saxony* to his share, whilst the bigotted Father having (i) withdrawn to *Rome*, tho' *animo revertendi*, was held to have abdicated, and with much ado prevailed with his Son and the People, to let him be an underling King of an inferior Kingdom. (k) *Cron. de Mailros.*

Besides other objections to any right of descent from him, according to a good (k) Authority, his elder Brother *Eschelstan* survived. However one or more Acts of Parliament in his life time had provided for three Successions after him, as appears by the Will of his fourth Son *Alfred*, made in the Presence and with the Consent of all *West-Saxony*. (l) *Bradies Introduct. f. 359.*

That Will recites what (l) Dr. Brady calls *Eschelwolf's* Will, but was a (m) Charter passed in a (n) General Council, for *Alfred's* express, that the Inheritance of King *Eschelwolf* came to him by Charter thereof, made (o) in a general Council at *Langedene*. Yet that Charter was but commendatory to a future relection; for *Eschelbert*, who is not named in *Alfred's* Account of that Settlement, was upon the Fathers death (p) ordained King of several of the Kingdoms: and succeeded his Uncle *Eschelstan* in (q) *Kent*. (m) *Affer Epistola hereditaria immo commendatoria.*

Alfred's Will shews that by the Parliamentary Settlement of the Crown, he was to be Partner in Power, when his Brother *Eschered* should succeed: (r) for which he appeals to the Testimony of all *West-Saxony*; accordingly they are both represented (s) as Kings at the same time. (n) *Append. visa Alfredi.*

Alfred was *Eschelwolf's* fourth Son: which soever therefore of his three Brothers left Sons, every one of 'em according to the vulgar notion, had Right to the Crown before him; and yet that great and good Prince, in the last Publick Act of his Life, expresses a satisfaction in that Inheritance, which (t) God and the Princes, with the Elders of the People, mercifully and bountifully gave him. (o) *Ita Hereditas Eschelwolfis Re. primæ ad me devoluta est, per cartam inde concessam in concilio nostro apud Lange-dene.*

That (p) *Eschelwerdi Cron. f. 479. Ordinati sunt filii ejus, &c.*

(q) *Cron. de Mailros f. 143. An. 160.*

(r) *Append. sup.*

(s) *Polycron. Re. Higden f. 255. S. Dun. f. 125. 126.*

(t) *Append. Sup. De hereditate quam Deus ac Principes cum senioribus populi misericorditer ac benigne dederunt.*

(s) *S. Dun. A*
ducibus & pre-
fulibus totius
gentis eligitur
& non solum ab
ipsis verum ci-
um ab omni po-
pulo adoratur
ut eis praeffer-
(t) Afferii An-
rales & Hun-
tingdon.

(u) *Vid. his*
Book dedicated
to Maud, Wife
to W. 1.

M. S. in Bib.
Cot. & Ed.
Ipse stemmate
regali a Prima-
ris electus.

An. 925. or
924.

(x) *Mat. West.*
f. 180. Sel-
den's Notes
upon Polyolb.
f. 211. & MS.

Lelandi &
Wendover MS.
in Bib. Cot.

(y) *Cron. Sax.*
p. 11. Hun-
tingdon f. 204.

Electus est Rex
in Mercia.
An. 944.

(z) *Bib. Cot.*
Vitel. D. 15.

vita sti Dun-
stavi Auctore
Esberno Doreb.
edit. Inter
script. sub nomi-
ne Anglia sa-
cra. Successu in
jure fravis.

(a) *Bib. Cot.*
Cleopat. B. 13.

Alter auctor vita Sti. Dunstani. Mox proximus haeres Eadredus.

That Will shews that he had two Nephews then alive, *Arhelm*, and *Erbelbalt*: who were not regarded in the Succession; but (s) *Alfred* was upon his Brother *Esbered's* death elected by all the Saxons.

To *Alfred* succeeded his Son *Edward*, by a manifest Election, having Cousin *Germans* of at least one Elder House: (t) *Erbelbald* or *Erbelwold*, who was one of them, was a Competitor with *Edward*, and was elected by the Danes.

Erhelwerd (who himself descended from *Esbered's* Elder House) says of *Edward*, (u) *Indeed she then Successor of the Monarchy, Edward, Son of the above-mentioned King, is Crowned after him. He, being of the Royal Stem, was Elected by the Nobility at Whitsuntide, one hundred years being pass'd since his Ancestor Egbert had his present Dominion.*

Where the Right of the Saxon Crown to the Monarchy, or Primacy, for even *Edward* had no more, was laid in prescription: but his Right to the Crown, in an Election upon a qualification from the Royal Stem.

Edward's Son and Successor *Arhelstan* was a (x) *Bastard*, tho' *Dr. Brady* would have the contrary believ'd, from *Malmsbury's* tenderness in the Matter; least it should diminish that King's Glory.

The Saxon (y) *Cronicle* mentioning the Father's death in *Mercia*, says, *Esbelstan* was elected King by the *Mercians*. *Huntingdon* says, in *Mercia*: whither they might have flock'd from other Kingdoms.

To *Arhelstan* succeeded his Father's eldest lawfully begotten Son, *Edmund*.

Tho' *Edmund* had Sons, *Eadred* (z) his Brother succeeded: and that as an Author of those Times affirms, in the Right of a Brother.

And an (a) Author of like antiquity, whose words are transcribed by others since the reputed Conquest, says,

The next Heir *Eadred*, took upon him the Natural, or Hereditary Kingdom, by succeeding his Brother.

Where the Uncle is plainly accounted the next Heir fit to Reign.

And

And yet the (c) *Enquirer* and Dr. *Brady*, absurdly suppose, that *Eadred* was only Tutor, Curator, Regent, or Protector, of the young Princes, and Kingdom.

Which was far from the meaning of that ancient Author, who blames the eldest of those Princes for pretending to succeed his Uncle (d) before he had been elected; tho' both with Clergy and Laity, one Elected supplied the Numbers and Names of the Kings: that is, no Man was accounted King, who was not Elected; speaks of the day of the common Election; what Authority the States exercised over him for his egregious folly on that day; and his being cast off by the Northern Part of the Nation (e) because he foolishly administered the Government committed to, or entrusted with him.

He being forsaken by an (f) Universal Conspiracy or Agreement, they, says that Author, the Lord so dictating, Elected his Brother *Edgar*.

After *Eadwig's* death, the same Author says, *Edgar* (g) took his Kingdom upon him, being Elected by the People of both Kingdoms; as equal Heir to both.

As an other (h) Author has it, he was elected by all the People of England.

To *Edgar* succeeded (i) his eldest Son *Edward* the Martyr: who, whatever many of the Moderns, and some of the Ancients may have thought, was undoubtedly a Bastard: which is not only shewn by an (k) Author of the Time; but is confirmed by the Brother *Ethelred's* Charter: which informs us that the Election of the States preferred his Brother: as the Charter has it.

(l) The Great Men of both Orders elected my Brother King: and gave me Livery of the Lands belonging to the Kings Sons: which plainly proves that *Edward* was a Bastard, the Private Inheritance having fallen to the Father's younger Son. However, this is an undeniable President, of an Election: and yet for the reason above, it may well be said, that *Edward* was left (m) Heir of his Father's Kingdoms, as well as Vertues: which Historians since the

2A

elegerunt, &c. milite; terras ad regios pertinentes filios in meos usus
(m) Vid. Dr. *Bradies* use of this introd. f. 360.

(c) Vid. *Enquiry* said to be Dr. *Bradies*, p. 14. and the *Dollors* introd. f. 364.

(d) Bib. Cor. Sup. An. 955. Post hunc surrexit *Eadwig* regnandi gratia pollens: licet in utraq; plebe Regum numeros & nomina suppleret electus

(e) Quoniam in commissio regimine insipienter egit.

(f) Ib. Hoc ita omnium conspiratione relictis, eligere sibi Do. distans, &c.

(g) Ib. Et regnum ipsius velut aquas hares aoutroq; populo electus.

(h) Bib. Cor. Vitellius. A. 20.

(i) An. 975.

(k) Osbornas sup.

(l) Bib. Cor. Regist. Magn. Abendonix sub Effig. Claud. B. f. 89. b.

Omnes utriusq; ordinis optimates ad regni gubernacula moderanda fravrem meum *Eadwardum* tradiderunt

An. 979.

(*) 11th. Cor.
sub Effig. Clau-
dii A. 3.

Ab Episcopis &
a plebe electus.
(m) Ib. volumus & concedimus.

(n) Benedic
domine hunc
pure electum
Principem.

(o) Bib. Cor.
Domitiani

A. 8. sup.

Firmatum est
pactum inter
Regem & popu-
lum suum &
firma amicitia:
jure jurando et
iam statutum
est, ut nunquam
amplius esset
Rex Danus in
Angliâ.

(p) An. 1015.
or 1016.

(q) Knighton
f. 2320. Misti
clameum, &c.

(r) Malm's
f. 39. Davi
Cnutionem eli-
gunt.

(s) Inter al.
vid. Argl. Saer.

Hist. Maj.
Winton' Cujus-

dani Ducis fil.
nomine Al-

gtram accepit,
in Concubinam,

ex qua genuit
filium nomine

Edmundum
Ironsidae. Et

Bib. Cor. Cleo.
Bastardus. (t)

the time of *W. 1.* transcribed from one of the Writers of *St. Dunstan's Life.*

That *Ethelred* who succeeded the *Martyr* was truly *electèd*, appears beyond contradiction, by the (*) *Ritual* of his Coronation: which requires that the King being *electèd* by the Bishops and the *Plebs*, or *Commonalty*, take his Coronation Oath: after the Oath taken, the People are solemnly ask'd, whether they will have him to be King: they answer, (m) *we will and grant*; they pray to God to bless his Servant, whom they have *electèd* King; and in an other place, they pray God to bless *this* (n) *purely electèd Prince.*

To this time the *Danes* possessed great part of *England*; and *Swane*, King of *Denmark*, Landing with an additional Force, this, with *Ethelred's* sloath and unacceptableness to his own People, drove him to an *Abdication.*

Upon *Swane's* death, the *English* invited back the *Abdicated King*, (o) on condition he would govern better than he had done: for which his Son *Edward* undertook. *Ethelred* returning, as an Author who lived about the time has it, a 'contract was established between the King and his People; and firm friendship; and it was enacted with an Oath, that there never more should be a *Danish King* in *Eng-land.*

After (p) this *Cnute* the Son of *Swane* laid claim to the Crown of *England* as a *Saxon*, as well as *Dane*, deriving from King (q) *Ethelbald*; who, doubtless was that Son of an elder Brother of King *Alfred*, who oppos'd *Edward* the elder.

Notwithstanding this, tho' the (r) *Danes* electèd *Cnute*, the *English* adhered to *Ethelred.*

Upon whose death they chose his Son *Edmund Ironside*, who, as (s) appears by the stream of ancient Authorities, was a *Bastard.*

Upon (t) *Edmund's* death, *Cnute* was Crown'd King of *England* by the Election of all; and according (i) to *Florence of Worcester*, he swore to be Faithful Lord, as the People did to be Leige Subjects.

At

B. 13. De regno & nominibus Regum Anglor, &c. De Edm. Ironside Iste erat Cited and applied Spelman's Gloss f. 277.

At *Cnut's* death, his two Sons, *Harold*, who was a (a) *Bastard*, or rather, *Spurious*, and *Hardecnute* his legitimate Son by *Emma*, *Ethelred's* Widow, were (b) by *Leofric* and all the Nobility on the North-side of the River *Thames*, elected Kings over all *England*; as partners in Power, and co-heirs. But Duke *Godwin* and other Noblemen in *West-Saxony* opposed, and prevailed.

It appears by an Author who wrote in the Confeſſor's Time, and whose words are transcrib'd by several, that they prevailed for the total rejection of *Hardecnute*; because he made not sufficient haste to take the Administration upon him. Therefore *Harold*, (who, however, would have been King of *Mercia*, and the *Northumbrian* Kingdom) was elected over all *England*, by the Princes, and all the People: or (c) as an other of like antiquity has it; is elected King by all the People of *England*. Upon *Harold's* death, and not before, *Hardecnute* was received: in what manner appears by the then standing Ritual, for the Coronation of Kings.

But *Emma's* Sons by *Ethelred*, *Alured* and *Edw.* (d) as *Malms.* observes, were despised almost by all; rather through the remembrance of their Fathers sloathfulness; than by reason of the Power of the *Danes*. Yet they two, without preference of one before the other, were accounted (e) Heirs of the Kingdom; and accordingly *Cnut*, (f) while he was in fear of the then Duke of *Normandy*, offer'd half his Kingdom to *Edward*, and his Brother *Alured*. (g) Upon *Hardecnute's* death, Earl *Godwin* was chosen Administrator or Protector of the Kingdom, during the vacancy, and till a fit Person should be elected King. *Godwin* summons a Convention of the States, where he nominated *Edward*, *Ethelred's* only surviving Son by *Emma*, whom the Saxons call'd *Elgiwe*. After some debates, all consented to the election of *Edward*. He being so elected, was in the sense of those times (h) Heir of the Kingdom to the last Possessor *Hardecnute*, his Brother by the half blood. And yet it is ob-

mit. A. 13. Cron. Wint. (h) *Gemet* f. 271. Ipse autem exivit hominem regni reliquit heredem. *Malms.* f. 450. Post. *Har.* fr. ipsius ex matre ribus *Anglia* in Regem electus &c.

(a) *Inguſas* f. 58.

(b) *Leofric* Comes & tota nobilitas ex parte Aquilonis fluminis Tamise elegerunt *Haroldum* & *Hardecnut* fratrem ejus &c.

(c) *Bib. Cor. Abbrev. Cron.* fin' temp.

Edw. Conf. Vid. etiam ib. *Cleop. A. 7.* Cron' breve ad An. 1062.

Haraldus. Rex eligitur ab omni populo *Angl.*

(d) *Malms* f. 43.

(e) *Vid. Scrip. Norm. Eucomium Emma* Regno hereditatis vestra privamini.

(f) *Gemet.* f. 271.

(g) *M. S. cited in Monast.*

1. vol. Regni cura Regina assensu & Magnatum consilio Comiti *Godwino* committitur donec qui dignus esset, eligeretur. & *Bib. Cor. Dom.*

& *Edw.* totius *Edw.* a proce-

(a) *Cur. Angl. CC Mon.*
i. vol.

f. 59. Periclitata sit hereditaria successio, magnunq; interstitium inter fratrem meum qui patri meo mortuo successit meq; habuim fuit.

(b) *Mat. Par. addit. f. 46.*

(c) *Eschelwerd's Hist. Mens ætatis.*

servable, that (a) according to a Charter of *Edward's* pals'd in Parliament, at the latter end of his Reign, the *Hereditary Succession* was hazarded by the *Danes*: that is, according to what I before observ'd, the *Anglo-Saxon regnant branch* of the *Royal Family* was kept back, and was likely never to have been restored. 'Tis evident that it was not for *Edward* to carry this Point farther; for besides the *Danish Royal Family*, claiming from King *Eschelbald*; and (b) *Fretheric*, Abbot of *St. Albans* in his time, coming from the ancient *Saxons* and *Danes*, and lineally descended from King *Cnut*; there was the Historian (c) *Eschelwerd*, or his immediate Ancestor, of the Family of King *Ethelred*: and in all probability, there were several descendants either from *Ethelstan*, *Eschelwelf's* elder Brother, or from his Sons *Eschelbald*, and *Ethelbert*.

What was the known Law in the *Confessor's* time, both as to the Succession, and the continuing King, besides the former Evidences, appears beyond contradiction from that King's Laws: according to which.

(d) *Vid. sup. of his.*

1. The (d) *Monarchy* was founded in election: which explains in what Sense a King is there taken to be *Constituted*.

2. If the King do not answer the end for which he had been *Constituted*; (e) not so much as the name of King shall continue in him.

(e) *Nec nomen Regis in eo consistit.*

(f) *Vid. the Antiquity and Justice of an Oath of Abj. p. 90, & 91.*

3. It receives as a (f) Rule in all Kingdoms, and particularly here, the Judgment of *Pope Zachary*, encouraging the *Franks* to depose their King *Childeric*.

With *Edward the Confessor*, and the *Saxon* and *Danish* Successions of Kings: *Harold*, the Son of *Earl Godwin*, as I shall shew, never was King, nor reputed King by any, but his own Party.

Here I may observe.

Brad. f. 363.

1. That *Dr. Brady* is mightily mistaken in his assertion, that 'the *Saxons* did in their subjection, owning of, and submission to their Princes, acknowledge both proximity of blood, and nomination of their Princes, often both, sometimes only one of them; but never followed any other rule.

2. The chief rule of Succession, upon the death, or disability of any King, was a proper election of a worthy Person, of the *Regnant Branch* of the *Royal Family*.

3. *Dr.*

3. Dr. Bradie's notion, that *'Elegerunt*, signifies no more than *recognoverunt*, they acknowledged, owned, submitted unto him as their King, is by no means true; the recognition being manifestly subsequent to, or in consequence of the *election*: nor is any thing more plain, than that the *States* did from the beginning of the *Monarchy* downwards, *rightfully declare an Heir* to the Kingdom, and then acknowledge his *Right*: tho' neither next upon the Royal Line, nor representing the next; nor yet nominated by the *Predecessor*. And indeed till a rare and noted instance in the case of *Hen. 5.* on whom the Crown had before been entailed in Parliament; no Prince was known to have been formally recogniz'd, till he had taken the Coronation Oath.

4. If according to any good authority of the *Saxon* or *Danish* Times, it should seem, that any man came to the Crown by the Gift of his *Predecessor*; it must have been made with such solemnity as was requisite, even for the granting of Lands. As that of (a) *Egbert's* above-mentioned, or (b) *Athelstan's* in an Assembly of the *Bishops*, *Abbots*, *Dukes*, or *Earls*, and the *Precurators*, or Representatives, of the Country; or an (c) other before the *Plebs*, or *Commons*; or *Edgar's* (d) in the open air, with the privacy of the Great, or *Wise-men*, of his whole Kingdom.

In the *Confessor's* life time, there were three Competitors for the Crown, *Edward*, *Edgar Atheling's* Father, and Son to *Edmund Ironside*; *Harold*, who was *High Steward* of *England*, and the most powerful of any Man, tho' not his Father's eldest Son; and *William Duke of Normandy*, Grand Nephew to *Emma*, who had been Crown'd Queen of *England*, nor as has appear'd above, was *William* under any incapacity from his Bastardy. Besides his Wife *Maud* was descended from a Daughter of King *Alfred*, married to *Baldwin* Earl of *Flanders*: upon which account, a Commentator on the *Grand Customary* of *Normandy*, held him to be the first, or chief *Heir*.

Edward, Son to *Edmund Ironside*, was at one time designed by the *Confessor* for his Successor, if he could prevail with the Nation to consent; but that *Edward* dying before the *Confessor*, his Son being a Minor, seems never then to have been thought of.

burd. f. 354

- (a) *Sup.*
 (b) *Bib. Cor. Claud. B. 6. Reg. magnum Abund. c. 50. An. 931. Patria procuratoribus.*
Vid. Rot. Par. 17 E. 3. p. 1. m. 20. d. A Petition in Part. from the Borough of Barnstable, senting forth that they had been a Borough, and sent Members to Par. ever since King Athelstan's Charter.
 (c) *lb. ejusdem Tota plebis generalitas.*
 (d) *Cant. Antiq; in Turri Lond. B.*
 (e) *Guil. de Rouille Erat regi Anglie primor hares ex Matilda &c.*

Harold's design was covert; nor does he appear to have been a Pretender, till the Confessor lay upon his death-bed.

(a) *Inguif.*

(b) *Leges Edw. Regis ed per Lamb.*

(c) *Cant. Orig. in Bib. Cor. Harodem sibi esse Sec. adoptavit.*

(d) *Rot. Pat. 1. H. 6. m. 11. Et cart. Antiq. CC.*

(e) *Regnum præd. nobis jurare fecit.*

(f) *Pictar. ut memini.*

(g) *Vid. Domesday-Book.*

But Duke *William* had long been promis'd his Cousin King *Edward's* interest: in order whereunto, we may well believe, he in (a) the year 1051. came over to *England*, and, doubtless, to ingratiate him to the Nation, was by the Confessor carried up and down the Kingdom. In the year 1057. or 1058. the design was brought to bear; and in a Great Council of the whole Nation, *William* was declared Successor; or as the Law (b) received by him has it, agreeing with a Charter pass'd in *Parl.* 15. of his Reign, (c) was adopted Heir; or as another Charter has it, *Edward* instituted him (d) adopted Heir. That this Adoption or Institution of an Heir to the Crown, was with a Consent truly National, I shall elsewhere have occasion to prove at large: at present, shall only observe, that the above-cited Law says, that *Edward* caused the Kingdom to (e) swear to *William*; that *Wilnot* Earl *Godwin's* Son, and *Hacum*, his Grandson, were sent Hostages to *William*, to secure the future Allegiance of that Family; that *Robert*, Archbishop of *Canterbury*, and *Harold*, were successively with the Duke to assure him of his being declared Heir to the Crown; which *Harold* swore to endeavour to preserve to *William*. But notwithstanding the Nations and his own Oath; while the Nobility and People were at the Confessor's Funeral at *Westminster*, *Harold* got a Party together at *Lambeth*, where, as some have it, he set the Crown upon his own Head. The mad *Englishman*, (f) as a cotemporary Writer has it, would not stay to see what the Publick Election would appoint.

Harold's Possession whatever it was, prov'd very short, lasting but nine Months: nor was he ever fully recogniz'd or submitted to by the States, or the Body of the Nation: he never held any Parliament or Convention of the States; which I take to be the reason that no Charter of his is to be seen, nor have I met with any mention of one: They who fought for him against *William*, were judg'd Traytors, and their Estates (g) forfeited: and it is rightly observ'd by the Lord Coke, that in *Domesday*, *Harold*,

Harold, who usurped the Crown of England after the decease of King Edward the Confessor, is never named per nomen Regis, sed per nomen Comitis Haroldi.

Wherefore he leaves him out of his List of our Kings.

William, according to some Authors was encouraged to his attempt, from the consideration that Harold was neither of the Saxon, nor Danish Royal Stock.

When William Landed, he claimed the Crown from his Cousins Gift, with the consent of the Nobility of the Kingdom, confirmed by Oath: and lays his qualification in being thought the *most deserving of all that were nearly related to the Confessor*. Harold had nothing to plead against that, but the suggestion, that the Crown had not been settled by a *Consent* sufficiently formal; that it was made without a *Convention, and Law, of the Senate and People*: which 'tis no wonder that he should pretend, tho' there were never so formal an *Election*.

Notwithstanding the Right, with which the Norman Duke Landed, he proffered to submit to what the English should decree; and therefore to a *new election* if they thought fit. Upon Harold's death, some of the English who dreaded the consequence of receiving William after a bloody Battle, set up Edgar Atheling for King: who, tho' but the second degree from a Bastard, and tho' his Father never had Possession, was look'd upon as the *true Heir* of the Crown: that is the Person of the last *Regnant Branch* of the Royal Family, who ordinarily would have succeeded by common consent of the *States*, if of sufficient Merit; and reasons of State, or other obligations did not interpose. But the learned (a) Monk Guitmond, who could not but know the constitution in this matter, held him to be but *one Heir* among many of the *Line of the Royal Family*. However the generality of the Clergy thought themselves bound to maintain the Title with which King William Landed, and that 'twas (b) *Rebellion* to oppose him: yet before his being received for King, he at *Berkhamsted* made a *League, or Contract* with the People, headed by the Great Earls, Edwin, and Mercar; who came up with the Forces from the North, which had never been in the Battle

Ricard. f. 119.
Quoniam omnium qui genus suum attingerent me credebatur excellen-
tissimum.
Selden's re-
view p. 439.
Absq; generali
senatus & po-
puli conventu
& edito.

(a) Ord. vir.
f. 525. Edgar-
us Adelarius,
aliiq; plures ex
linea regalis
prospicit.
(b) Wars Ad-
vers. ad Mar.
p. 2.
(c) Fl. sig.
Fidelitatem
juraverunt
quibus & inse-
fectus pignit
R. de dicto
col. 80.
Bronson col.
658. S. Dun.
f. 195.

tle

(a) *Cuncti Praefules regni, proceres cum Gail, concordiam fecerunt; ac ut diadema regium fumeret, sicut mos Anglii principatus requirit oraverunt.*

tle against the Duke. (a) Part of the *League* made with the People of *England*, was, that he should be Crown'd as the manner of the *English Government* requires: at his Coronation, the consent of the People was ask'd in the due and accustomed manner: and the account Historians give of the Oath he then took, shews it to be that which stood in the *Saxon Ritual*.

After which, he more than once received and swore to that Body of the *Common-Law of England*, which had obtain'd the name of *King Edward's Laws*: which, as has been observ'd, declare the end for which a King is *Constituted*, and that he loses the Name, or ceases to be King, when he answers not, that end.

(b) *Pref. to his compleat Hist.*

All the Liberties and Privileges the People can pretend to were the Grants and Concessions of the Kings of this Nation, and derived from the Crown.

Introd. f. 13.

shall prove from undeniable reason and authority that he govern'd the Nation as a Conqueror, and did so take and repute himself to be.

f. 14. This appears first by his bringing in a new Law, and

imposing it upon the People, and 'tis clew he did this. The Justiciaries or Chief Justices, the Chancellors, the Lawyers, the Ministerial Officers, and under Judges, Earls, Sheriffs, Bailiffs, Hundredaries, were all Normans from his first coming until above 100 years. *Introd. f. 20.* The English had neither Estates nor Fortunes left, and therefore it could be no matter to them, by what Law, Right, or Property, other Men held their Estates. (c) *Vid. Introd. f. 326.*

Indeed Dr. Brady, who is as free with his Conquerors Memory, as with the Liberties of *England*; (b) which he calls the Grants and Concessions of the Kings of this Nation; will have it, that *William* the I. regarded his Oath only in the beginning of his Reign, and that by notorious violations of his contract, with the People of *England*, he acquired the Right of a Conqueror; and thereby put an end to the ancient Constitution of this Monarchy, and those Liberties and Privileges of the Subject, which manifestly appear to have been of elder date than the Monarchy.

Upon which, if one would return the Freedom of his (c) *Censures* against others, it might be said, that this was not only to make the then King the Successor of a Conqueror; but with a prospect of applying the Rights which he ascribes to a supposed Conquest, to justify what should be practised upon the late intended Conquest of this Nation.

That the Judgment and Practice of *William* the I. was very contrary to the Doctor's Imaginations, will be

proved

proved by numerous Instances ; and that it was so as to that part of the Constitution which concerns the Succession to the Crown, appears by that King's Death-bed Declaration: which some would set up for a will, disposing of the Crown at that very time when he owns that it is not his to give.

'I, sayshe, (a) appoint no Heir of the Crown of England, but to the Universal Creator, whose I am, and in whose hands are all things, I commend it ; for I did not possess so great Honour by Hereditary Right: but with direful conflict, and much effusion of Humane Blood, I took it from the perjured King Harold, and brought it under subjection to me.

(a) Ord. Vital
Selden's Notes
Polyolb. and
Camden's
Brit.

He adds.

'Therefore I dare not bequeath the Scepter of this Kingdom to any body, but to God alone ; least after my death, worse troubles happen in it by my occasioning. For my Son William, (always as became him obedient to me) I wish that God may give him his favour, and that, if it so please the Almighty, he may Reign after me.

According to this.

1. He had no right, or pretence, to dispose of the Crown.

2. If some would have regarded his disposition ; so many would have been likely to assert their liberty, that it might occasion great troubles.

3. Providence only could determine who should succeed : which is almost as much as if he said, there is no fix'd or certain right in any body. One reason why he pretended not to dispose of the Crown, was, that he had it not by Hereditary Right, that is, as it came not to him by descent, neither was it disposible like common Inheritances : not but that after he was declared Heir, and admitted King, he had as true an Hereditary Right in the Crown, as any of his Predecessors had : and this is justified by his own and other Charters. In (b) one, he styles himself by the Providence of God, and Inheritance of Consanguinity, King of the English. In another, he says, he was (c) made King by Hereditary Right. In another, he is call'd Heir to Edward by stock and gift : and in Charters of W. 2. and

(b) For. Carr.
19 H. 6. n. 16.
m. 7. per
Inspec.

(c) Mon. 1.
vol. f. 48. vid.
Dr. B's Intrad.
The pretence
that he claimed
jure hereditario,
is idle, unless
it were testamentario :
for neither was
he Heir to Edward,
nor Edward Heir to
the Crown by
Descent.

(a) *Mort. 1. vol. f. 98.*

H. 1. their Father is said to have succeeded by (a) *Hereditary Right.*

(b) *Cart. Antiq. in Tur. Lord. F. Et Collectanea M. Eale Mill. in Bib. Eospit. Linc.*

Indeed one (b) of the Charters of W. 1. seems to contradict his Death bed Declaration, or the sense, I have given of it : for speaking of his victory over Harold, he says, he *acquired the Kingdom due to him and his Successors, to be possessed for ever by Hereditary Right.*

Yet this if duely considered is no more, than that by his *Rightful Possession*, his became the *Regnant Family*; and the Successions were to be derived from him.

An. 1087.

His Son W. 2. being, through the prevalence of the *English* against the *Normans*, *elected* soon after the Father's death; truly succeeded upon the *old Hereditary Right*: and, indeed stood fairer for a recognition than his elder Brother *Robert*.

Introd. f. 370. Cum plenaria consensu & consilio totius communitatis &c.

Dr. Brady observes out of *Knighton*, that the Barons of *England*, with the *plenary consent and counsel* of all the *Community* of the Kingdom, branded *Robert* with *illegitimacy*, because he came not from a *lawful Bed*. No Man, I believe, has imagin'd that *Robert* was not the Son of W. 1. by *Maud*, and that after Marriage: but, as has appeared above, till she had been *Crowned Queen* of *England*, she was but as a *Concubine*; and her Issue *illegitimate*: and thus the very qualification to be *elected*, proceeded from that *election* which made the *Wife Queen*.

An. 1100.

H. 1. Upon this account was to be preferred upon the death of W. 1. before the eldest Brother *Robert*, then alive: yet he did not scruple to own by his (c) *Charter*, that next to God's mercy, this was owing to the *Common-Council* of the *Barons*.

(c) *Cart. in Mat. Par.*

(d) *Bib. Cor. Claud. A. 3. De Convemtu seniorum &c. Et Episcopi prosternant se super pavimentum hinc & inde circa electum Regem.*

The *Ritual* (d) for his *Coronation* shews, that he had been *elected* in a *Convention* of the *States*; prays to God to bless him whom they have *elected King*; and declares his *Authority* to be delegated to him *hereditario judicio*, by an *Hereditary Judgment*, or *Decree*, constituting him *Heir* of the *Crown*. Till he presumed too far upon the love of the *People*, and bore too hard upon 'em, they never thought of changing him for his elder Brother: nor was his *Possession* long disturbed.

He

He, well knowing that his Issue had no certain Right of Succeeding him, till the States should agree to it, prevail'd upon 'em, to make two Settlements of the Crown successively; one upon his Son *William*, an other after the Son's death upon his Daughter *Maud*, and both the Settlements were establish'd by a National Oath. But it is observable, that the last was, if the King died without *Heir*, say some, without *Heir male*, say others. According to which, with regard to the ancient Constitution, *Stephen*, Sisters Son to *H. 1.* when recognized by the States, became within the express Provision of that Settlement.

Agreeably to this, as (a) we have it from an Author of the Time. *H. 1.* upon his Death-bed, recommended *Stephen* to be received by *Hereditary Right*. And that Author speaks of his Merits, joyn'd with his being of the Royal Stock, as inducements to his Election.

As an (b) other Author has it, *because he appear'd fit to Reign, as well for the Dignity of his Stock, as the probity of his mind, they agreed upon a common Resolution, and all with concordant favour, Constituted him King; a compact being first made, and a mutual Oath, according to the vulgar expression.*

Maud's Title, tho' under a former Settlement of the Crown, gave him no disturbance, till he either broke his part of the mutual Contract, or at least disoblig'd the Clergy: which made his own Brother (c) the Pope's Legate, turn against him, and help to bring in *Maud*; who refusing to (d) swear to the Confessor's Laws, was (chiefly by means of the Londoners, who were very powerful at all Elections) rejected, and never fully recogniz'd.

At that time election was counted no disparagement to a King's Title: for *Stephen* (e) not only took into his Title 'by the Grace of God, by the Assent of the Clergy and People, elected King of England'; but in an (f) Assembly of the States, in a memorable Speech, too long to be here inserted, appeals to them, 'who ought rather to succeed in a Kingdom; one whom the unanimous consent of the Nobility, and the University of the People earnestly wish'd for, desired, elected? Or one, whom every Sex, every Age, oppos'd and cried out against? What more pernicious

Ar. 1116.
Hemingford
f. 473.
Gerv. Dorob.
Col. 1337.

(a) B.M. Cor.
sub Effig. Voj.
p. 19.
De Monast.
Eliens. Un
jure heredita-
rio suscipiatis.
Et de stirpe re-
gia descenderat.
(b) Gesta Re-
gis Steph. in-
ter Script.
Norm.

(c) Malm. Hist. Nov.
f. 106.

(d) Gerv. Dorob. Col.
1354.

(e) Bradies In-
trod. f. 371.

Assensu cleri
& populi in
Regem electus.

(f) Bib. Cor.
Galba. A. 2.

Inter Sermones
ad populum.

Quid obsti-
natus quid
perniciosis

quam contra
voluntatem
omnium regni

jura violenter
abripere.

cious, than against the will of all, violently to snatch the Rights of the Kingdom? Had Stephen's brave Son Eustace lived, in all probability H. 2. had never succeeded; and however, was glad to come after Stephen, as his (a) adopted Heir; as W. 1. had been, to the Confessor. Neither was Maud's consent ever ask'd to the Settlement, or recognition afterwards, tho' she lived beyond that time: nor did the States take any notice of her pretended Title, after her manifest forfeiture, of all that she could claim by the Settlement in the time of H. 1. or otherwise howsoever. H. 2. knowing that the Consent of the States was the best Title any Child of his could have to succeed him; and yet that they had liberty of altering a Consent, given upon reasons, which might afterwards fail; out of abundant care for his Son Henry, had him Crowned in his life time: which, through French Counsels, put the Son upon insisting on the Rights of Kingship, to the great clamity of the Nation: tho' the Subjects swore Allegiance to him with an (b) express *Salvo* for the Allegiance due to his Father. Which, whatever some have thought, or (c) affirm'd, was (d) the only *Salvo* in the Scotch Kings *homage*, according to ancient custom, for the Crown of Scotland.

To H. 2. (e) succeeded his eldest surviving Son, Richard, but was not accounted King upon the death of his Father. Authors say, he was to be (f) promoted to be King, by Hereditary Right: which is far from being King by Hereditary Right. But, as the former usage explains such words, he deserved to be elected and made King, in which sense one of (g) the Authors who lived at the time, immediately explains himself, mentioning his Coronation Oath, after the solemn and due election, as well of the Clergy as People.

Before this, he was at first only Earl of Poitou, and then Duke of Normandy, but (b) not till he had been solemnly invested with the Sword of that Dukedom. And Bromton informs us, that he accepted the Crown upon (i) condition of keeping his Coronation Oath; without undertaking

- (a) Brompton f. 1024.
Cur. adopcione. Successorem regni Anglie & heredem meum jure hereditario constitui.
 (b) Antiq. Brit f. 130.
Mat. Par. &c.
 (c) Scotland's Sovereignty p. 285.
 (d) Bib. Cot. Domit. A. 10. lib. 2. Ref. ibi forma Conventionis inter nostrum & Reges. Vid. etiam Ben. Abbatem Autor. ejusdem temporis.
 (e) R. 1. An. 1189.
 (f) Walsingham Iped. Neustrie f. 45.
 (g) R. de Dico Col. 647. Comes itaq; Filiorum Rie. hereditario jure promovendus in Regem, post tam Cleri quam populi solemnem & debitam electionem &c.
 (h) Mat. Par. f. 1159.

d; An. 1188. Ducatus Norm. gladium suscepit &c. (i) Bromton

which

which, the *Archbishop* charged him not to assume the *Royal Dignity*. He going to the holy Wars after his being Crown'd, his Brother *John* would have seiz'd the Government as *vacant*, but had no tollerable pretence, the War having been carried on with a National Consent. Upon this, it was adjudged by a (a) Common-Council of the Kingdom, that *John* should be *dissess'd* of all that he held in *England*, which might extend to such right or expectancy as he had in the Crown.

Notwithstanding which, upon *Richard's* death, the great Question came upon the Stage, whether the Crown ought ordinarily to go according to the right of *Proximity*, or of *Representation*.

The right of *Proximity* was in *John*, Brother to King *Richard*: this was the Right which the *English* seem'd to think most agreeable to the Constitution of this Monarchy; and is according to the (b) *Custom of Normandy* for Succession to that Dukedom; and, as (c) *Cujacius* supposes, of most Nations. Foreigners were for *Arthur* of *Brittain*, as having the right of Representation, being the Son of *John's* elder Brother: and this was the Right (d) according to the custom of *Brittain* in *France*.

But as to the Law of *England*, it appears by (e) *Glanvil's* account of the Law, as it was taken in the time of *H. 2.* that even for the Descent of private Inheritances, it was doubtful, whether they ought to go to the Grandson, by the eldest Son who died in the Father's life time, or to his next surviving Son. If indeed the eldest Son had in the Father's life time done homage to the Chief Lord for his Father's Inheritance; this was held to remove the doubt. And *Glanvil* afterwards says upon the Question between Uncle and Nephew, that the condition of the Possessor is the better.

According to which, *King John* having obtained Possession of the Crown, had it rightfully, and *Arthur* had no right to turn him out.

John (f) being beyond-sea at his Brother's death, sent over the *Archbishop* of *Canterbury*, and the *Earl Marshal* of *England*, to solicit for his being admitted to the Throne.

(a) *Hoveden de An. 1194. Per comune consilium regni definitum est. De omnibus tenementis suis.*

(b) *Grand Cust. cap. 25. Desceance.*

(c) *Cujac. de feudis f. 519. Calls the other mos Britanniæ.*

(d) *Wendover in Elib. Cor. Dicentes judicium esse & consuetudinem illorum Regionum.*

(e) *Glanv. tract. de Legibus & cons. rni Angliæ lib. 7. c. 3.*

Licet præmoriatur patri suo &c. nulla dubitatio est, &c.

Tunc quidem ita hodie obtinet inter avunculum & nepotem, quia melior est conditio possidentis.

(f) *Wendover de An. 1199.*

These *Great Men*, with the assistance of the *Chief Justice of England*, prevailed upon many to swear *Allegiance to John*: and in a *Convention at Northampton*, those Persons were *Sponsors (a)* for *John's* doing right to all men: upon which condition, or in confidence of his performing what had been undertaken in his name, the *Earls* and *Barons* swore *Fidelity to him, against all Men*: yet after this, he was *formally elected* in a full *Convention of the States*, where (b) the *Archbishop* declares it as matter known to 'em all, 'that no man ought to succeed another to the 'Kingdom, upon any previous reason, unless unanimously elected 'by the whole Realm, &c. But if any one of the *Royal Stock* was more deserving than others, his *election* ought 'to be consented to, the more promptly and readily.

Notwithstanding what had pass'd in favour of *John*, in the *Convention*; the (c) *Archbishop* at the time of the *Coronation* calls him but *Earl*.

King John not only took the Oath appointed by the standing *Ritual*, which declares every *King of England* to be *elected*; but assumed the *Royal Dignity*, as his *Predecessor* did, with the express condition of keeping his Oath. Having broken this *Contract*, and notoriously departed from that end, for which, according to the *Confessors Law*, expressly sworn to by him, he had been constituted or created *King*; in making War upon his People with *Foreign Forces*, with which he exercis'd inhuman barbarities; and as much as in him lay alienating his *Imperial Crown* to the *Pope*: he, in the (d) *Judgment of the Court of France*, as well as of the *States and People of England*, fell from his *Royal Dignity*: the *Throne* was (e) become vacant; and during the *vacancy*, the *Administration* devolved upon the *States*: whereupon they resolved to elect a new *King*, and sent a solemn *Embassy* to the *King of France*, to send over his Son *Lewis* to be *King*.

(a) *Wend. Quod jura sua redderet universis sub tali conventione, Comitibus & Baronibus Comiti memorato fidelitatem contra omnes homines juraverunt.*

(b) *Mat. Par. Noveris discretio vestra, quod nullus prout ratione alii succedere habet regnum; nisi ad universitate regni unanimiter, invocata spiritus gratia electus, &c.*

(c) *Mat. Par. Dico de hoc Comite &c.*

(d) *Wendover. Dein adjuratus est ab eodem Arch. and dissimile prohibetur, ne honorem hunc accipere presumat, nisi in merito habeat opere quae juraverat perimplere. Ad hoc ille respondens promissit, se per auxilium Dei, bona fide ea quae juraverat servaturum. (e) *Mat. Par. Addit. f. 281. The French King's Advocate says, Dare non potuit, potuit tamen dimittere eum. (c) It. vacans itaq; regnum sine Baronibus ordinari non debet; unde Barones elegerunt.**

of England; whose wife was *John's* Sisters Daughter. But the chief inducement to this Election, seems to have been that expectation, in which they were not deceived, that the (a) Foreigners would desert *John* for *Lewis*.

(a) *Mat. Par.*

Tho they promised to Crown him King, they, seeing great grounds to dislike his French Temper and Conduct, kept him upon his good behaviour, without a Crown: And having found by the dying Confession of one of his confederates, that he had sworn, if he came to be once Crowned King, he would treat the English as Rebels to their former Prince; they soon sent this *Probationer* packing; yet did not hold *John* to be King.

After *John's* death, many of the greatest interest in England, while *Lewis* was here, and *Eleanor* Prince *Arthur's* Sister alive in *Bristol Castle*, (who, according to the vulgar notion ought to have been Queen) elected *Henry*, *John's* Son: but were far from thinking him King upon the death of his Father; or from repenting of what they had done to the Father: but they thought it advisable to cut off *Lewis* his expectation of the Crown: to which end the Martial of England Summons a Convention to *Glocester*: where he tells (b) the States, that tho' they had justly prosecuted the Father for his evil deeds, yet that Infant was innocent; because he is the Son of a King, and our future Lord, and Successor of the Kingdom, let us Constitute him our King.

An. 1216.

(b) *Mat. West.*
f. 277, & 279.
Knighon col.
2426.

At last all as with one voice, cried thrice, let him be made King.

Here 'tis evident that he was not accounted King till Constituted or made, and was but a future Lord: and agreeably to this (c) *Matthew Paris* says, they assembled in order to exalt *Henry*, the King's eldest Son, to be King of England.

(c) *Mat. Par.*
ut. *H. Regis*
fil. primogen.
in *Regem Angl.*
exaltarent.

He took the Coronation Oath more than once, and at (d) one of his Coronations, had the Confessor's Sword car-

(d) *Mat. Par.*
An. 1236.

20 *H. 3.* In signum quod est Comes Palatinus & Regem si oberret habeat de jure, potestatem cobidendi. Vid. *Wendover*. A Coronation at Canterbury 5 *H. 3.* Vid. etiam *Lib. de Antiq. Leg. in Archivis Ciu. Lond.* f. 117. A Proclamation 53 *H. 3.* declaring that he would not then wear his Crown, and dispensing with the Services of the Citizens of London and others.

ried.

* *Ma. Par. Ipsi de commun conc. totius regni ipsam cum iniquis consiliariis suis a regno depellerent, & de novo Rege creandotracarent.*
 (a) *Bracton lib. 2.^o c. 16.*
Rex autem habet superiorem Deum; item Legem per quam factus est Rex; item Curiam suam &c.
Vid. etiam ib. c. 24. & l. 3. c. 9.
 (b) *Lib. de Antiq. Leg. in Arch. Civ. Lon. An. 1260. 44 H. 3.*
 (c) *Lib. de Antiq. Leg. in Archiv. Civ. L. 53. H. 3. post ejus decessum rectis hereditibus corona Anglia.*
 (d) *Mat. West. Gilbertus & Fobes Comites, nec non Clerus & populus, ad magnum altare ecc. Westm. celeriter properarunt Ed. prim. Regis fidel jurantes.*
 (e) *Annales War. f. 227.*
Facta convocazione omnium Prel. &c.

ried before him, by the Earl of *Chester*, one of the Earls *Palatine of England*, for a sign that that Sword was not to be born in vain.

He having trod in his Father's steps, the *States* were likely to have made good their solemn (*) denunciation 17th of his Reign, of deposing him in a *Common-Council of the whole Kingdom*, and creating a new King, which as appears by (a) *Bracton* a very learned Judge in that Reign, was no more than the then known Law of the Kingdom. Various were the events of a long Civil War, in which at last the death of the great Darling of the *Church* and People, the then Hereditary High Steward of *England*, and the bravery of *Edward Henry's* Son gave him the victory: which they who were on his side, and his own experience of the consequence of his former Counsels, kept within some bounds of moderation. *Henry* to secure the Succession to his eldest Son *Edward*, (b) had before that success, caused many, and particularly the Citizens of *London*, to swear to his Son as Successor.

And after that it should seem that a Parliament had made (c) a Settlement of the Crown. For in the 55th of his Reign a Writ was sent to *London*, the execution of which was return'd into the Parliament that year at *Winchester*; and 'tis probable the like had been throughout *England*; in pursuance of which Writ, the Mayor, Barons, Citizens, and University of the Commons, swore Allegiance to the King, after him to his eldest Son *Edward*, then to his Son *John*, after that to the right Heirs of the Crown of *England*: which not being to the Heirs of either of those Persons, plainly left the *Inheritance* as I have shewn it was from the beginning.

Upon the Father's death, the (d) *Clergy* and *Laity* flock'd to *Westminster*, where they declared or received for King, *Edward*, then beyond-sea in the *Holy War*, so called. Soon after this, as I take it, a great *Convention* (e) of the States was holden in his name: there a *Chancellor* was chosen, and other Provisions made for the Peace of the Kingdom, in *Edward's* absence: the Writ which they issued out, requiring the Subjects in general to swear Allegiance to *E. 1.* says, the Government was devolved upon him by Hereditary

tary Succession, (a) and the Will of the Nobility, and the Fidelity performed, or Allegiance sworn to him. (a) Rot. claus. 1 E. 1. m. 11.

Agreeably to which, *Walsingham* says, (b) 'they recognized (b) *Walsing.* Edward their Leige Lord, and ordained him Successor of f. 1. his Father's honour. Tho' he was a very gallant Prince, yet, having taken ill advice, (c) being to cross the Seas, (c) *Mut. West.* he upon a Pedestal at *Westminster-Hall* Gate, with the f. 430. 25 E. 1. Archbishop of *Canturbury*, and the Earl of *Warwick* by his side, publicly ask'd forgiveness of his People; (d) entreated (d) *Suscepianis me: quod si non rediero, in Regem vestrum filium meum coronetis.* 'em to receive him again at his return; and if he died, to Crown his Son King: which they who were then assembled consented to.

How much it was then known to concern a King to keep to his part of the Contract, as he would have his People continue bound; appears by two great Authorities in our Law, of that time, *Fleta*, who, as to this matter, transcribes *Bracton* almost verbatim; and the *Mirror* (e) of Justices; which speaks of the first Institution of (e) *Mirror* Kings among us, by Election; for what End they were P. 8. Elected, and what they were to expect, if they answered not that End.

E. 2. as (f) *Walsingham* informs us, succeeded not so much (f) *Wals. f. 68.* by Hereditary Right, as by the unanimous Assent of the No- *Non tam jure hereditario &c.* bility and Great Men.

He was for misgovernment, formally depos'd, or (g) Abdi- (g) *Wals. f. 107. Rex dignitate regali abdicatur. & filius substituitur.* cated from the Regal Dignity, as *Walsingham* has it; and his Son *Edward* was Substituted, or Elected, in his stead.

The Son indeed, tho he had headed Forces against his Father, seem'd to scruple accepting the Crown, without his Fathers consent: And ex post Facto, after *Edw. 2d.* had been depos'd, and his Son Elected, with a threat, that if he refused, they would Elect somebody else; the Father took some comfort at the Election of his Son, and, as much (h) as in him lay, consented.

The Son it must be own'd in a Writ, cited by Dr. *Brad-* dy, says, his Father removed himself, by the assent of the Pre- lates, Earls, Barons, and other Nobles, and also of the Com- monality of the whole Kingdom. Which being onely in Writs Issued out of the Chancery, can be of no Force to limit or explain that Act of the States: And was but a civility

or

or complement from the Son to the Father. What the States judged in the matter, will be very plain from the following account, in a coteremporary Author.

(a) *Bib. Cot.*
Cleop. D. 9.
Annales de
Gestis Brit-
annum De.
An. 1326.
Convocatum
est concilium
generale &c.

(b) *In Regem*
Angliæ est sub-
limatus.

(c) *Stat. 1 E. 3.*
Regal.

‘ King Edward remaining in Custody at *Kenelworth*, a
‘ General Council of the whole Clergy and People of
‘ *England*, was Summon’d, viz. of every City and every
‘ County and Borough, a certain number of Persons, to
‘ *Treat* and *Ordain* with the *Great Men*, of the State of the
‘ King and Kingdom. In which Council, at the cry of the
‘ whole People, unanimously persevering in that cry, that King
‘ Edward II. should be *Deposed from the Throne of the King-*
‘ *dom*; because from the beginning of his Reign to this
‘ day, he had *misbehaved himself in his Government*, had
‘ Ruled his People wickedly; had dissipated Lands, Ca-
‘ stles, and other things belonging to the Crown; *had,*
‘ *by perverse Judgment, unjustly adjudged Noblemen to Death*;
‘ had advanced the Ignoble; and *had done many things con-*
‘ *trary to the Oath taken at his Coronation*; *Walter Archbishop*
‘ of *Canterbury*, pronouncing Articles of this kind, by *as-*
‘ *sent and consent of all*, King Edward 2. is wholly *deposed*, and
‘ Edward his eldest Son (b) *advanced* to be King of *England*.
‘ And it is *Ordained*, that from thenceforth he should not
‘ be called King, but *Edward of Karnarvan, the King’s Fa-*
‘ *ther*. And immediately Messengers were sent from the
‘ Council to the said Edward the King’s Father, to notice
‘ to him what had been done, and to read to him the Ar-
‘ ticles upon which he had been deposed. He answer’d,
‘ he was detained in custody, nor could contradict
‘ their *Ordinances*; but said, he would bear all patiently.

And it is observable, that a (c) Statute of the Kingdom
1 E. 3. justifies the taking Arms against E. 2. while he
was in Possession of the Throne, and indemnifies all Per-
sons for the *pursuit of the said King, and taking and with-*
holding his body. E. 3. who knew that himself came in by
an *election of the States*, being aware that if he should
die before any Provision were made about the Succession,
the Controversie concerning the Right of Proximity and
that of Representation would be revived, between his
eldest surviving Son, and Grandson by the eldest who
died in his life time; obtained an Act of Parliament,
whereby

whereby (a) Richard, his Grandson by his eldest and best beloved Son, was declared or made, *very Heir to the Crown.*

R. 2. (b) following the example of E. 2. had the same fate, of which the States of the Kingdom had some years before given him fair warning, telling him (c) they had an ancient Statute, according to which they might, with the common assent and consent of the People of the Realm, abrogate him, and advance somebody near of kin of the Royal Stock.

He not profiting by this admonition, the States were some (d) years after put to the exercise of their authority, and having adjudged that he (e) justly ought to be deposed, the (f) whole States appointed Commissioners, for giving the Sentence of Deposition. And a Record speaking of it, says, he was (g) deposed for his demerits. The Act of State for this, says 'twas, as (h) in like cases had been observed by the ancient custom of the Kingdom. This being done, Henry Duke of Lancaster (i) as soon as the Kingdom was vacant, rose out of his Scar, and claim'd the Kingdom begin void.

His claim was (k) *als descendit be ryght lyne of the blode comeynge fro the gude Lord Henry therde.*

The reason seems very plain, why he claim'd from H. 3. his being the last inheritable blood which he could claim from: not from R. 2. because deposed: nor from E. 3. because of the forfeiture of R. 2. declared or constituted his next Heir: not from E. 2. because of his forfeiture: nor from E. 1. because E. 2. had been his next Heir.

Hen. 4th's Descent from H. 3. was the qualification for an election. This was nor, as has been supposed, a strict right of Succession, (l) as he was the next Heir then appearing: but he entituled himself to a preference before all other Descendants from that Blood, as being a Deliverer of the Nation from Richard's tyranny: (m) he having with the help of his Kinsmen and Friends, recovered the Kingdom, which was upon the point of destruction, through the defect of Government, and violation of the Laws. This induced the (n) States and all the People, unanimously to consent, that Henry should

(a) Rot. Parl.
50. E. 3.
(b) Began his
reign An. 1377.
(c) Knighton
f. 2683.
*Propinquo-
rem aliquem de
stirpe regia*
(d) 23 R. 2.

(e) Rot. Parl. 1.
H. 4. n. 16.

(f) N. 52.
(g) Rot. serv.
die Coron.
H. 4.

(h) Rot. Parl.
1 H. 4.

(i) Rot. Parl.
1 H. 4. n. 54.
so Walsing.

Ypod. Neust.
f. 156. *Regnum
Anglia sic va-
cans.*

(k) Rot. Parl.
sup.

(l) Vid. The
Debate at
large. p. 127.

(m) Walsing
sup. & Rot.
Parl.

(n) Rot. Parl.
n. 54. *Idem*
Status cum toto
populo absq;
quacunque diffi-
cultate vel
morâ ut Dux
præfatus super
eos regnaret
manifeste
conferunt.

(a) *Rot. Servic. sup.*

(b) *Vid. inf. the case of Bishop Merk.*

(c) *Rot. Pat. 2 H. 4. rot 4.*

(d) *Interliga. & confederati adversario & inimico nri Regis & mi sui, de Francia & adherentibus ad eundem advers. &c.*

(e) *Nota Richard's name was used only to colour the exciting the French to over-run this Land.*

(f) *Quod ipse Epus unus esset.*

fill the vacant Throne : and they (a) appointed all the Ceremonies of his Coronation. But as far as proximity to the last King could infer a right, he being Grandson to E. 3. had it before *Mortimer* descended from *Lionel Duke of Clarence*, under whom the Family of *York* claim'd : besides, that *H. 4.* was undoubtedly the first on the Male line. Tho' no (b) *Lay-man* of knowledge and integrity, can be thought at that time to have questioned those grounds upon which *H. 4.* was declared King; yet since 'tis hardly possible that there should be any Government, which some will not be desirous to shake off, as the *Jews* did the *Theocracy* ; it can be no wonder that some would colour their ambition or malice, under pretence of love to justice; and that they should object want of right to disturb the most just and equal Government. What was at the bottom of objections against *H. 4th's* Title, will appear by the case of a true Head of the Church Militant, *Merk*, or *Mark*, Bishop of *Carlisle* ; who not being able, as a Divine, to make good his Argument against the receiving *H. 4th.* for King; was resolv'd to justify it by dint of Sword, after he was made King.

For in (c) second of *H. 4.* he was indicted, and tryed by a common Jury upon a special Commission, for that he and other his Accomplices, among which there were two bigotted Knights, *Blunt* and *Sely*, were (d) *leagued and confederated together with the Adversary and Enemy of England, the French, and their Adherents ; traitroustly to bring the said Adversary into the Land of England, with intention to destroy the King, and all his Leige People of the Kingdom, and to new plant the Kingdom of England with our enemies of France : that they in an hostile manner went up and down, making great destruction and slaughter ; and without any Authority, assuming to themselves Royal Power, proclaim'd (e) Richard to be King, and that they would not suffer Henry to be their Lord, or King.*

To this Indictment the Bishop pleaded *Church-Priviledge*, as an (f) *anointed Bishop*, which the Court over-ruled : the the reason for which is very remarkable ; ' because the ' matters contained in the said Indictment, concern the ' death of our Lord the King, and the destruction of the ' whole

'whole Kingdom of England; and consequently the (a) 'manifest depression of the Church of England, by which he 'claims to be privileged: all which is high, and the greatest 'Treason, and the Crime of *læsa Majestas*: nor ought any 'man of right to pray in aid of the Law, or to have it, 'who commits such a Crime, or intends to commit 'it, &c.

(a) Nota Et
consequenter
eccles. Angli-
cane per quam
&c.

His plea being thus over-ruled, the Bishop pleaded not guilty: but being convicted of the horrid matter contained in the Indictment; it seems he did not think this a fit cause to die for; and whether he merited a Pardon or no, by sincere Repentance, at least obtained one: in which it is observable, that he is called (b) the *late Bishop*: for this restitution to the Peace, did not restore his Ecclesiastical Dignity.

(b) *Pardona-
vimus eidem
nuper Episcopo
secliam pacis
&c.*

He, who is still called the *late Bishop*, having a pardon sent him, petitioned to be delivered out of Prison: which was granted upon his finding Sureties for his good behaviour: and four undertook, that he (c) should for the future behave himself well, towards the King, and his People.

(c) Quod ipse
amodo se bene
geret erga Ro-
minum Regem
& populum.

Thus the fear of death reformed this stiff Prelate; and made him engage to sit quietly under a Government, which none but the Enemies to England, and their Adherents, endeavoured to subvert. Still some were found calling themselves *Englishmen*, who, for the like ends, with *Merk*, would do their utmost to blemish *H. 4th's* Title: this occasioned *Oaths of Recognition*, thrice repeated 5°. (d) of his Reign: first at a Council of Worcester, then at a Great Council at Westminster, and after that in a full Parliament; where the two former recognitions, which were voluntary Associations, were affirmed; (e) tho' as is there said, there was no need of it.

(d) This recited in the Petitions of the Commons Rot. Pat. 8 H. 4. p. 1. m. 4.

By those Oaths, they acknowledged the then King 'to be their Sovereign Leige Lord, to obey him as their King; and acknowledge the Prince his eldest Son as Heir apparent, and inheritable to the Crown of England, to him and the Heirs of his Body. And for default of such Issue to his Brothers and their Issue successively, and (f) hereditarily; according

(e) D'un volun-
tair & d'un as-
sentement quil
nen busignoit
my afferme-
rent.

(f) *Enheredi-
blement.*

(a) *Pur viver
& morer excon-
tre . tous les
gens de monde.*

(b) *Rot. Pat.
7 H. 4. pars. 2.
m. 23. Ad
ammovendam
penitus materi-
am disceptatio-
nis &c.*

*Vid. ult. ib.
reciting the
breach of for-
mer Oaths.*

(c) *Fore & esse
ac fore & esse
debere.*

(d) *Rot. Pat.
sup. Hereditas
que heredita-
ta.*

(e) *Rot. Pat.
8 H. 4. p. 1.
m. 4.*

(2) *Rot. Pat.
8 H. 4.
Pourvus succe-
der en voz
saisdirz corone,
roialms, &
Seigniories, pur*

*les avoir oue tousz leur appartenances, apres ure decesse, a luy, &c. (b) Communi consen-
su regni juxta morem ejusdem regni, &c.*

to the Law of England, to (a) live and die against all People in the World.

The perjury of some, and the doubts rais'd by others, upon some of the expressions in the Act 5 H. 4. occasioned an other (b) 7°. which, by the Counsel and Assent, of the 'Lords Spiritual and Temporal, to wit, the Prelates, Great 'Men, Peers, and Clergy, and also at the earnest Petition 'of the Commons, and by Authority of the said Parliament, 'declares, that the King's eldest Son, (c) shall be, and is, and ought hereafter, and now to be, true lawful and undoubted Heir and Universal Successor to the Crown, and Kingdoms of England, and France, and all the King's Dominions, whatsoever and wheresoever beyond the Sea; and also has right of univerſally succeeding the King, in the said Crown, Kingdoms, and Dominions. To have to him and the Heirs Male of his Body, and in default of such issue to in remainder to his Brothers.

In an other Charter pass'd in that Parliament, the (d) *Inheritance* or *Hereditation* of the Crown is entail'd upon the King, and the Heirs Male of his Body, then to his four Sons, and the Heirs Male of their Bodies successively.

It seems the (e) next year some doubts arose upon these different Settlements, that 5°. then remaining upon Record: therefore they cancel and make void the Letters Patent of the Entail 5°. and change, and amend that Settlement, which they seem to have thought defective.

1. In only declaring the Prince *Heir Apparent*, and *Inheritable* to the Crown; which was no more than to declare him, before others, qualified to succeed, if the States should Elect him.

2. In declaring him *Inheritable* only to the Crown of England, without mentioning (a) its appurtenances; seeming to think, that in Grants of this Nature, nothing would pass by implication.

But to prevent all ambiguities, they being, as is said in that Record, met in a Parliament (b) according to the Custom

of the Kingdom, for divers Matters and Things concerning the King and his Kingdom: The King, with common Consent of the Kingdom, Enacts, That a new Patent be Sealed, constituting Prince Henry Heir (c) Apparent, to succeed the King in his Crown, Realms, and Dominions, to have them, with all their appurtenances, after the King's Decease, to him and the Heirs of his Body; and so in remainder to his three Brothers successively: whereby they had a larger Estate than by the Entail 7^o which was to Heirs Male.

(c) Heir apparent pour vous succeder.

Thus, by Virtue of one or more Settlements, by Authority of Parliament, H 5. succeeded, and yet it was thought a great instance of the confidence the States had in him, that in a Convention, or Assembly, holden according to Ancient Custom, in which they treated about (d) creating a new King, some of the Nobility immediately Swore Allegiance to him, before he had been declared King.

(d) Pol. Virg. in Vit. H. 5. & Drs. Gale Praef. Script. Saxon. Dan. In quo de Rege creando more majorum agitabatur. Vid. etiam Stow in the Reign of H. 5. mentioning this, and calling that Assembly a Parliament.

But it is to be observed, that whereas his Father died the (e) 20th of March, he is said to be created King on the (f) 5th of April; Death cutting off the course of his Glories, his Infant Son, H. 6. came in under the Parliamentary Entail, but the Administration was held to have fallen upon the States, (g) who, accordingly, after having declared H. 6. King, in full Parliament, pass'd a Patent, constituting Humfry Duke of Gloster Protector of the Realm, John Duke of Bedford Regent of France, and Henry Beaufort Bishop of Winchester, and Thomas Beaufort Duke of Exeter, Governors of the young Prince.

(e) Walsingham. (f) Polydore Virgil. (g) Rot. Parl. 1 H. 6.

The Death of the brave Duke of Bedford, occasioned not only the loss of France, but the raising the Family of York to a pretence, which in all probability had been buried to this day, had not H. 6th treacherous Ministers put him upon making Richard Duke of York (h) Regent of France, after being High Constable of England, and Lieutenant of Ireland.

(h) 13 H. 6.

With these advantages, Duke Richard set up under a Mask of Popularity, as if he only sought redress of grievances, while himself was the only National Calamity. As nothing but success could give him any colour of Title, he was forced to conceal his Ambition even from his own Party,

(a) Vid. the
Oath 29 H. 6.
Stow, f. 395.
I am, and ought
to be humble
subject, and
Liege-man, &c.
(b) Rot. Parl.
38 H. 6. n. 7.

Party, till 26 H. 6. yet after (a) that, acknowledged, and swore to H. 6th's Right, and confirm'd it with the Sacrament; which Solemnities were to be subservient to his imaginary *Divine Right*. Tho' by his Frauds and Perjuries, he often came within the prospect of a Crown, (b) 38 H. 6. he was deservedly *Attainted of High-Treason*, and an Association, with an Oath, was voluntarily enter'd into by the Lords; wherein every one severally acknowledged H. 6. to be his most redoubted Lord, and rightwisch, or Rightful, by Succession born to Reign over him, and all the Kings Liege People; that he will do his utmost for the Wele, and surety of the King's Person, of his most Royal Estate, and the very conservation and continuance of his most high Authority, Preheminence, and Prerogative, and for the preservation of the Queen, and of Prince Edward his Right redoubted Lord the Prince; that after the King's Death, he will take and accept the Prince for his Sovereign Lord, and after him the Issue of his Body lawfully begotten; for want of such Issue, any other Issue of the Body of the King; that he will never give Aid, Assistance, or Favour, to any thing contrary to the premises; and that he will put himself in his due undelayed devoir, with his Body, Goods, Might, Power, Counsel, and Advertisement, to resist, withstand, and subdue, all that should presume to do contrary to the premises, or any of them.

This Association, not being General throughout the Kingdom, had no great effect; not so much from any belief the Nation had of Richard's being injured, as from the burdens a Treacherous Ministry induced a weak Prince to lay upon the Subjects: This made the Commons of Kent invite over, from abroad, the Duke and his Party, who had fled from Justice; then the Tide turn'd, and the King became wholly in the power of the Duke of York, under whose awe and influence a Parliament was call'd, where he laid claim to the Crown, with circumstances, which one would think, were enough to give any Man a face of Title: and yet his pretended *Divine Right*, countenanc'd by Providence, was mightily qualify'd by the courage of the Parliament, and their regard to the Constitution of this Monarchy.

His

His claim was (a) as Son to *Ann*, Daughter to *Reger* (a) *Reg. Parl.*
Mortimer, Son and Heir to *Philippa*, Daughter and Heir to 39 H. 6. v. 11.
Lionel Duke of Clarence, third Son to E. 3. whereas H. 6. de-
 scended from *John of Gaunt*, the 4th and eldest surviving
 Son. After Debate among the (b) Lords upon this matter, (b) N. 12.
 these Objections were agreed upon against *Richard's* pre-
 sence of Title.

1. The Oaths they had taken to the King their Sovereign Lord.

2. Acts of Parliament made in divers Parliaments of the King's Progenitors, of Authority sufficient to defeat any manner of Title to be made to any Person.

3. Several Entails made to Heirs Male.

4. That *Richard* did not bear *Lionel's* Arms.

5. That H. 4. took upon him the Crown, not as Con-
 queror, but right Inheritor to H. 3.

All that is urged materially against this for *Richard*, is,

1. That Oaths do not bind against God's Law; and that requires Truth and Justice to be maintain'd: but this being a Spiritual matter, he refers to any Judge Spiritual.

2. That there was but one Entail of the Crown, 7 H. 4. but that this was void against the right Inheritor of the Crown according to God's law, and all Natural laws.

3. It could be justify'd by Record, that H. 4th's saying was not true.

Upon which 'tis observable,

1. That *Duke Richard's* answer goes upon a manifest begging the Question, and supposing, that he had a Right which could not be barred by Act of Parliament.

2. That the Lords having mentioned several Entails upon Heirs Male; we are to believe that there was then upon Record, the Entail upon Heirs Male in the time of E. 3. pleaded by (c) Judge *Fortescue* in defence of the Title of his King H. 6. This we are the rather to believe, because there was but one Entail upon Heirs male in H. 4th's reign: nor is *Richard's* denial any argument against this, it appearing that he thought it sufficient for him to affirm any thing; and this was to pass for Truth and Law. Thus he denies, that there had been any Entail but 7° H. 4. forgetting that which had been made 5° and was amended 8 H. 4.

(c) Vid. Un-
 reasonableness
 of the new separa-
 ration, Fortescue's MS. of
 this belongs to
 the Cotton Li-
 brary, but not
 now to be found
 there, unless re-
 stored very late-
 ly.

and ly.

(b) N. 15.
to be up to him,
and to the Heirs
of his Body co-
ming, and to
his 4 Sons, &c.

and so very much did he mistake, that he supposed the Entail 7^o to be upon the (b) *Heirs of the Body*, when it was upon *Heirs male of the Body*.

3. What the Lords say of *Richard's* not bearing *Lionel's* Arms, confirms another objection against him made by Judge *Fortescue*, from the *Barstardie* of *Philippa*, born while *Lionel* was beyond the four Seas; and never own'd by him; nor did she, or her descendants, till the time of this claim, bear the Arms of that Family.

4. *Richard's* Right of Descent, admitting there had been no illegitimacy, is laid as a Right in *Nature*: but either this must be as the Laws of the Land guide the course of Nature, or, otherwise, we must go back in search of this Right, if not as far as *Adam*, yet to some descendant from the eldest House of the *Saxon Royal Family*: to such, at least, as could derive their Pedigree from some House elder than *King Alfred's*; which may be done at this day. Besides, if we should look back to a Right in Nature, all the Kings, descendants from *H. 2.* from whom Duke *Richard* came as well as *H. 6.* must have been Usurpers; *H. 2's* Children having being begotten on (c) another Man's Wife, who had been Divorced for her Adultery; and therefore by God's Law could not Marry again: nor does it appear, that the Divorce was from the Contract. Or, if this Matter should admit of Debate, such of our Kings as descended from an other common Ancestor, *King John*, must have been Usurpers; not only by reason of *John's* suppos'd Usurpation upon *Arthur of Britain*, and his Sister; but in that his Children were begotten on (d) an other Man's Wife, who does not seem ever to have been divorced: and besides, according to the Law of Nature it would seem, that *John* had a former Wife in being. For he was divorced from her only for their being third Cousins, as *H. 2's* Wife was from her first Husband, as they were Cousins in the 4th Degree. If the first Marriages in both cases were void, or voidable, it could have been only by the Laws of the Romish Church; but if those Laws shall make a natural right, by governing the course of descents, much more shall the Laws of particular Countries. If, by the Law of Nature, Duke *Richard* meant that which
the

(c) *Eleanor*
Wife of Lewis
King of France,
Mat. Par. de
An. 1150.

(d) *Mat. West.*
f. 12co.

the *consent of Nations* has made to pass for the dictates of nature; according to (a) *Cujacius*, this Law of Nature is for the right of *Proximity*, which *John of Gaunt*, from whom *H. 6.* descended, had to his Father before *R. 2.* and *H. 4.* *John of Gaunt's* Son, had before the Son of *Lionel's* Daughter, supposing her legitimate. And by that Law it should seem, that *Males* are ordinarily to be preferred before *Females*; tho' their *Vertues* have often rais'd 'em to Empire.

Farther yet, if by this he meant the Law of *reasonable nature*; what shadow of reason can be assigned, why (b) the eldest Issue of a King's eldest Child, whether that Issue be an Infant, or void of understanding, or humanity, ought universally, to succeed to Crowns, before the King's eldest surviving Son; whatever be his Merits, or the exigencies of the Publick? And why should not a *moral* incapacity in this sense be a *natural* one?

But if the *Great Lawyer Fortescue*; who, as may be seen by the Rolls of the *King's Bench*, was *Chief Justice* therefrom before *Richard* pretended to the Crown, and to the end of *H. 6th* Reign, may be allowed to speak the Sense of the Learned in that Time; they held the Power of the Prince (c) to *flow*, or be *derived*, from the People: according to which, it must have been taken to be more according to natural right, that the *People*, who appointed the Succession in any Family, should govern and vary it, as they saw occasion; than that from their pitching upon a Person, or Family, they should be for ever debarred from doing justice to the demerits of one, and to the merits of another, in that very Family.

I am sure the learned *Grotius*, who distinguishes (d) *lineal Succession* from *Hereditary*, says, (e) *an Hereditary Kingdom is one which was made so by the Peoples free consent*. And in such Kingdoms he supposes several Rules of Succession, by guessing at, or presuming, the will of the People.

If *Duke Richard* would have admitted the Law of the Land, to govern the course of Descents and Successions to the Crown; then 'tis evident beyond contradiction, that *H. 6.* came in by a legal and *natural* course of Descent: and, however, according to laudable custom from the

(a) *Vid. Sup.*
p. 27.

(c) *Vid. Grot. de jure belli & pacis l. 2. sect. 24.* For the Niece from the elder Son to exclude the younger Son, cannot hold in Hereditary

Kingdoms: For that gives only a capacity to succeed.

But of those that are capable, regard is to be had to the privilege of the Sex.

Vid. Rot. de B. R.

(c) *Fortescue de Laud. Legum Angl. Rex a populo potestatem effluxam habet.*

(d) *Grot. de jure belli & pacis lib. 2. sect. 22.*

(e) *ib. Sect. 14.*

beginning of this Monarchy, Acts of Parliament may alter that course.

(a) Rot. Parl. 39 H. 6. n. 18. The Oaths that the said Lords had made unto the King's highness, &c. saved, and their consciences therein cleared, &c. it was agreed that the said mean should be opened and declared to the King's highness.

(b) N. 18. The King by advice of the Lords, condescended to the Accord, and to be authorized by Authority of this present Parliament.

(c) N. 27. saving and ordaining by the same authority the King to have the said Coronet, Reaumes, Royal Estate, Dignity, and freemintence of the same, and the said Lordship of Ireland during his lyf natural.

And furthermore by the same avis and auctoritie, wolle, consenteib and agreed, that after his deceffe, or when it shall pleas his highness to ley from him the said Coronet &c. or thereof ceaseth &c. (d) Baggot's Case 9 E. 4. Car le corone fuit taillie a lay per Parliament. (e) An. 1460.

However, the timerous (a) *Lords*, without concurrence in that matter of the stouter *Commons*, agreed, that the *Duke's Title* could not be defeated: and yet thought not themselves discharged from their Oaths to H. 6. unless he would consent to the mean, or expedient, they found out: which was, for the King to keep his *Estate and Dignity Royal during his life, and the Duke and his Heirs to succeed him in the same.*

To this both the King and Duke consented: but neither the King's Right to the Possession, nor the Duke's to the reversion, arose from their private agreement, but from the (b) *Authority of Parliament*; according to which, the King had as much right (c) to the Possession, as the Duke to the reversion.

And it remains as the judgment even of that Parliament, whatever force or awe were over it, that *Richard Duke of York* had no right to the Possession; and neither was King, nor of right ought to be King, till H. 6. should die, or cease to be King.

Nay even E. 4th's Judges owned, that H. 6. was not a meer Usurper, (d) because the Crown was entailed to him by Parliament.

As a just judgment upon *Duke Richard's* pretence of Title, contrary not only to the *National*, but *Divine Authority*, giving sanction to the Laws of the Kingdom, and his own Oaths; he died within sight of the *Promised Land.*

But (e) soon after his death, his Son *Edward* having less to answer for, and success to recommend him to the People; upon more specious pretences, succeeded H. 6. by a manifest election.

Tho' he and his Father had, upon the agreement established in Parliament, sworn to be true to H. 6. during his life, or till he should freely quit his Crown; the dread of

their

their Arms got a liberty for 'em to enter their protestations, that this was upon the exprefs condition, that the King performed his part : but if he should compass or imagine the death or destruction of the Duke, or his Blood, should forfeit the Crown. And indeed it seems that the first acts of Hostility after this agreement were committed by the Queen, and others of the King's Party ; who in attempting to rescue him out of the custody of the Duke of York, put an end to his pretensions with his life. But his Son Edward (a) having routed the Earl of Pembroke and other the King's Loyal Subjects, in a Battle near Ludlow, march'd up to London, where he was received with joy on the 28th of February. Then he calls a Great Council of Peers, to whom he opens his claim, upon the King's breach of the Articles. After the Lords had considered of the matter, they (b) determined by Authority of the said Council, that forasmuch as King Henry, contrary to his Oath, Honor, and Agreement, had violated and infringed the order taken and enacted in the last Parliament ; and also because he was insufficient to rule the Realms, and unprofitable to the Common-wealth ; he was therefore, by the aforesaid Authority, deprived and dejected of all Kingly Honor, and Regal Sovereignty : and incontinent Edward Earl of March, was, by the Lords in the said Counseil assembled, named, elected, and admitted for King and Governour of the Realm.

After this, the same day, the consent of the (c) common People was ask'd in St. John's Fields ; where a great number were assembled. The Lords being informed of the consent of the Commons, acquainted the said Earl with their election, and admission, and the loving assent of the Commons. The next day he went to Westminster, where his Title and Claim to the Crown was declared. 1. As Son and Heir to Richard his Father ; right Inheritor to the same. 2. By Authority of Parliament. 3. (d) And forfeiture committed by H. 6.

The (e) Commons being again demanded, if they would admit and take the said Earl, as their Sovereign Lord ; all with one voice cried yea, yea : which agreement concluded, he was then proclaimed.

Here it is observable.

(a) Stow. f. 413.

(b) Vid. Notes upon the Earl of Stamford's Speech An. 1692. Citing Graf-ton's Chron. f. 652. 653. 658. Speed f. 851. Stow f. 414. 415.

(c) Ib.

(d) 3d. Not mentioned in those Notes, but in Hollins-head f. 663.

(e) Notes upon the Earl of S's Speech Sup.

1. That *Edward* did not claim upon any Title Prior to the Settlement in Parliament, 39 *H. 6.* and therefore, in effect, claimed as adopted Heir to *H. 6.* as *H. 2.* had been to *King Stephen.*

2. He alleges against *H. 6.* forfeiture, by breach of the Contract establish'd in Parliament; and a Moral incapacity in him to Reign.

3. Notwithstanding this, he does not set up as King, before a solemn judgment pronounced against *H. 6.* and in favour of him; and the formality of a publick election.

4. It appears, that tho' he came to *London*, and was possessed of the head and strength of the Kingdom; and *Hen. 6.* had, in effect, abdicated, he, who according to the modern notion of the Successoraries, should have been King upon the death of his Father, was not King, nor so reputed by his own Party, till all those accustomed ceremonies were over; the last of which was (a) on the 4th of *March.* Now if it shall prove, that in the judgment of *King Edward's* own Parliament, his right to turn *H. 6.* out of Possession, was founded in *H. 6's* breach of the Contract, establish'd in Parliament; that *E. 4.* was not King till the 4th of *March*; and that no Act committed against him before that day, was Treason; nor was there, or could there be Treason against his Father, who never had been King: then it will appear, that some consent, or election, of the States, or People, was essentially necessary to make a King, even of one who had, or at least was suppos'd to have, all the right that descent could give him: and that the other King must have forfeited, or ceased to be King, before such right could be duely claimed. But,

(a) *Hollinshead* 663.

After the Earl of *March* had taken upon him the Govern-
ment.

(b) *Rot. Parl.*

1 *E. 4. m. 8.*
Declaratio tituli regii, & restitutio ad eandem.

(c) *Ib.*

(d) *Rot. Parl.*

1 *E. 4. m. 8.*
n. 20, 21, 22, 23, 24.

1. The Act of Parliament declaring (b) *E. 4's* Title, is held to be a restitution to the same: so that the very Title, or Right was as if it had been extinguished.

2. It is in that Act (c) particularly insisted on, that *H. 6.* had declared before witness, that he would not keep the contract established in Parliament; and is expressly charged with the breach of it.

3. *E. 4. (d)* is adjudged to have been in lawful Possession of the Realm, upon the 4th of *March*; and [on that day] lawfully seized, and possessed. But not before: and then the exercise

exercise of the Royal Estate by E. 4. and amotion of H. 6. are declared rightwifely, lawful, and according to the Laws and Customs of the Realm.

4. That Act fays the Crown ought to have defcended to *Edmund Mortimer, Edward's Ancestor*, and after his deceafe to the next Heir of Blood : *if the same Ufurpation had not been committed.* Wherefore, according to that Act, the Crown did not defcend to any one of *Mortimer's Family*, while the Perfon who they fuppofed to have ufurped the Crown, or any defcendant from him, kept Poffeffion.

5. *Edward's Parliament* held his Father to have been no more than *Duke of York* : and tho' in the (a) Act attainting *H. 6.* he is charged with the Murder of *Richard Duke of York*, the firft Treafonable Fact in *H. 6.* and others, is laid in levying War on the 29th of *March*, and imagining to depofe their Sovereign Lord *Edward* : who had been declared King on the 4th of that *March* : and *H. 6ths* forfeiture is laid in acting againft his Faith and Allegiance to his Sovereign Lord : whereby they plainly fhow, that as there could be no Treafon againft the *Duke of York*, becaufe he was never received for Sovereign Lord : neither could there have been any againft *E. 4.* unlefs he had been fo received.

(a) Rot. Parl.
1 E 4. m. 17.
Convictio quorundam Dom.
& al. authoritate Parl.

6. If any now will own his *prefent Majesty* to have right by Law ; and yet refufe to declare him *rightful King* ; They go no farther then *E. 4.* and his Party did, even after his Poffeffion, in relation to fuch as they held to be Ufurpers. And fould fuch Men add, that neither has the *late King* any right ; as it is probable that they mean, that he has no right making him King ; they therein would ftill keep to that Prefident. But then if they would exactly follow that, they muft believe that the *late King* cannot be duely reftored to the Regal Dignity, till he fhould be received by the *election*, or *confent*, of the *States*, or *Body of the People* : nor could that be *rightfully* done, unlefs his *prefent Majesty* in a legal fenfe *ceafed to be King* ; before fuch *election*, or *confent*.

Thus far I am fure they cannot come without a manifeft departure from their avowed Principles : and, therefore,

fore, to keep to them, they must give up the only colourable Authority for their notion of King *de jure*, and *de facto*.

And they must yield, that there is not the least shadow of pretence, from what was held in those times, that there was a *King of right*, at the very time that an other was in *fact*: it going no farther, than that the Person who *was King*, ought not to have been King; but while he was King the other was none.

(a) *Vid. The Debate at large &c. p. 128. The Earl of March upon the death of R. 2. and consequently E. 4. from him was undoubted*

King by conscience, by Nature, by Custom, and by Law: referring to the Par. Rol. 1 E. 4. (b) Rot. Parl. 1 E. 4. m. 7. & 8. and that God had given Ed. the grace of eviction that the amotion &c. is right-wis.

(c) *Stow. 412.*

(d) *De term.*

Mic. 1. H. 7.

f. 4. b.

(e) *Stat. 1. E. 4.*

c. 1.

(f) *Referr'd to*

17^o E. 4.

(g) *Rot. Parl.*

17 E. 4. n. 34.

Vid. etiam

Rastal. cap. 6.

7. The judgment of *E. 4th* first Parliament, whatever hard names they gave that Family, on which they trampled, was so far from being an Authority, as has been (a) pretended, against the receiving his *present Majesty*, upon the late King's breach of the *Original or Common-Law Contract*, confirmed by several declaratory Statutes of the Kingdom, and the solemn Oaths of our Kings; that it is exprefs for the (b) *eviction and amotion* of one King, upon his breach of a *contract establish'd in Parliament*, and the setting up an other by an *election*.

And it is observable that the Act 1^o (e) *E. 4.* which confirms several judicial and other Acts of such as it calls Kings only in fact, says, *'other than by Authority of any Parliament bolden in their times*; plainly admitting that Authority to be sufficient in it self.

H. 6. coming again into Power; because of a Possession with such a consent of the People as made *E. 4.* King; was (c) formally again *elected* at the *Tower*: and in *H. 7th* time, (d) was adjudged to have had his attainder purged, by his *re-adeption of Power*: which seems not to have been till he had been *re-elected*.

Then *H. 6.* calls a Parliament, where he in his turn attains the Adherents of *E. 4.* and, as we are to believe, himself: but the Record of that having been cancelled, and the Rolls loss'd, it appears not whether it was for any Act committed before *H. 6th* *re-adeption of Power*.

The Tide again (g) turning for *E. 4.* all the Acts of that Parliament are reversed and declared, or made, void: from the time that he had been declared, he was held to have continued the Possession of the Regal Dignity, tho' withheld from the exercise of the Power; and therefore

H. 6.

H. 6. from the first admission of *E. 4.* to the Crown, was accounted no King, and his Parliament to be but a *pretended* Parliament.

E. 4. his usage of *H. 6.* was repaid to his Sons by their Uncle *R. 3.* some will have it that he made them away, as indeed is intimated in the Act attainting *R. 3.* but 'tis certain that they were bastardized in a Convention, whose Acts were by (a) Parliament after *Richard* was admitted King, declared for truth, and not to be doubted; and there are (b) Authorities to induce the Belief, that *Edward's* Sons were really *Bastards*, by reason of the Father's pre-contract: however the (c) Convention declared, that they were not fit to Reign, because they were Infants, and their Mother ignoble, and married clandestinely without the knowing and assent of the Lords. *George Duke of Clarence*, the next Brother to *E. 4.* having been attainted in a Parliament of *E. 4.* they having singular confidence in *Richard's* particular merit, have chosen in all that in them is, and by that their certain writing, choose him their King and Sovereign Lord, to whom they know of certain, it appertaineth of Inheritance to be chosen.

(a) *Rot. Parl. 1.*

R. 3.

(b) *Vid. Buck's Hist.*

(c) *Rot. Parl. 1.*
R. 3.

And observing that tho' the Learned in the Laws and Customs know his Title to be good, the most part of the People is not sufficiently learned in the Laws and Customs; they declare 'that the Court of Parliament is of such Authority and the People of this Land of such a disposition, as experience teacheth, that Manifestation and Declaration of any Truth or Right made by the three States of the Realm assembled in Parliament, and by Authority of the same, maketh before all other things most faith, and certain quieting of mens minds, and removing the occasion of doubts and seditious language. Therefore by the Authority of that Parliament, it is pronounced and declared, that their Sovereign Lord the King, was, and is, the very undoubted King, as well by right of Consanguinity and Inheritance, as by lawful Election, Consecration, and Coronation. And they Enact, Establish, Pronounce, Decree, and Declare, *Edward* the King's eldest Son *Heir Apparent*: to him and his Heirs of his Body.

Any Man who compares that Act at large with the former Presidents; must see, that it was penn'd with great

great Wisdom, and regard to the Constitution of the Monarchy.

And tho' out of an usual complement to the prevailing side, R. 3. has generally been represented as a Monster in Person, and Nature ; the learned *Buck* has made it doubtful, which was the most deserving in all things, R. 3. or H. 7. Certain it is, that tho' the Crown had, by Authority of Parliament, been settled in remainder after H. 6. upon (a) *Duke Richard* and his Heirs ; and that Duke's Grand-daughter was alive and marriageable, in the Reign of R. 3. her suppos'd Right gave him no disturbance, and his Possession was very quiet till he disoblighd the *Duke of Bucks* (who was the great Instrument in setting him up) by rejecting his Claim to be *High-Constable* of England : which was an Authority dangerous to be trusted in the hands of so popular a Man : nor could the *Duke* and his Faction expect to succeed in their conspiracy, without the support of *French Forces* : and, accordingly, applied themselves to *Henry Earl of Richmond*, afterwards H. 7. with whom the Duke of (b) *Brittany* had for some years kept even E. 4. in awe.

(a) *Rot. Parl.*
39 H. 6. n. 27.

(b) *Vid. Comines*
Un jeune
Prince de Engle
terre.

Henry was glad of the opportunity : and, to strengthen his Interest, agrees with some of his Party to marry the Daughter of E. 4. but was far from making any claim in her right. It is very probable that one of E. 4ths Sons was then alive : be that as it will, as appears by the Statutes 1 H. 7. cited above, his Parliament held that he landed with Title : and R. 3. being deserted, and slain in the Field of Battle ; that opposition to *Henry* was, by Authority of Parliament, adjudged Treason against the Sovereign Lord of this Land : and H. 7th. was held to have recovered his right.

(c) *Rot. Parl.*
1 H. 7. *Idem*
Dominus Rex
præfatis com-
muni bus ore
suo proprio elo-
quens ostenden-

do suum adventum ad jus & coronam Angliæ fore tam per justum titulum hereditariæ, quam per verum Dei judicium, in tribuendo sibi victoriam de inimico suo in campo.

In which, bating the Settlement in the time of the *Con-
fessor*, *H. 7.* claim'd as *W. 1.* did, by the *Inheritance of con-
sanguinity*, and that Success which gave him the preference
before others of the same Blood ; especially, since that
enemy, whom he subdued, was held to be an *Usurper*.

This, 'tis evident, that he was accounted before *H. 7.*
Landed. But if it be truly considered, his *Usurpation*, if
any, must have consisted in the Tyrannical Exercise of his
Power, which the Duke of *Bucks* had urged to justify his
Arms, and not from the assuming it ; and that *H. 7th's* So-
vereignty was founded in that *election* of the Body of the
People, without a *formal Convention*, which pitch'd upon
him as a fit Person to deliver them from their real or ima-
gin'd Yoke. This will appear beyond contradiction, from
the proceedings of the Parliament upon his Claim, and
the moral impossibility of giving it any other colour.
However, the Parliament took to it self full Authority in
the matter ; and (a) declaring their hopes that it might
be to the pleasure of Almighty God, the Wealth, Prosperity, and
Security of this Realm, by Authority of Parliament settles the
Crown upon *H. 7.* and the Heirs of his Body, exclusive of
all others. After which, indeed, they desire him to marry
Eliz. E. 4th's Daughter, (b) that by God's Grace there might
be issue of the Stock of their Kings : but then special care is
taken, that neither the King, or the Children by that mar-
riage, should be thought to derive any Title from her : for
tho' they, by Authority of Parliament, repeal her Bastardy
declared 1^o *R. 3.* they, by (c) the said Authority, ordain, that
the then Act ne eny clause in the same, be hurtful or prejudicial
to the Act of establishment of the Crown of England, to the
King and the Heirs of his Body begotten.

After this *H. 7.* obtains a Bull from the Pope, which
says (d) the Kingdom belonged to him, not only by right of
War, and notorious undoubted (e) nearest Title of Succession ;
but also by the election of the Prelates, Peers, Great Men, No-
bles, and the Commons of all the Kingdom of England ; and by
the known and decreed Statute and Ordinance of the three States
of the said Kingdom of England, (f) in their Convention called
a Parliament.

(a) Stat. 1 H. 7.
Rot. Parl. Il est
ordeign establie
& enact par
autorite du dis
Parliament, &c.

(b) Rot. Parl.
1 H. 7.

(c) Ib. 2. 18.

(d) Bib. Cor.
Cleop. H. 3.
(e) Ib. proximo
successionis titu-
lo.

(f) In ipsum
conventu, &c.

According to this, tho' his Reign was held to have begun before he had been declared King, it was, as I shall have occasion to observe in other cases, only by way of relation to that solemn Investiture ; without which he had never been King. That his Right must have been derived from a plain *Election*, is very evident ; for,

1. He had been (a) attainted in a Parliament of R. 3. and if the Royal Blood could not be so attainted but whenever a former King ceased to be King, the Person so attainted, standing next to the Crown, should have his Attainder purged by the descent of the Crown ; then according to them of this Opinion, the Earl of *Warwick*, Son to *George Duke of Clarence*, who had been attainted by Parliament in the Reign of his Brother E. 4. must have had the Right before H. 7.

And yet, if we regard the distinction between *Proximity* and *Representation*, H. 7. was, in that respect, more truly the (b) *next Heir* to the Crown. But however, the resolution of the Judges, (c) 1 H. 7. has been taken, they held the disability to cease *eo facto*, that he took upon him the Royal Dignity to be King ; nor by any imagined Right of Descent.

2. At least, one of the Children of E. 4. was alive when H. 7. came to the Crown.

3. Tho' in truth, it appears by the Statute reversing the Attainder of H. 6. to have been the judgment of H. 7th's Parliament, that H. 6th's Family, of which he was, ought to be the reigning Family ; yet H. 7. had no pretence to preference in that Family, but from his Merits, and the People's Choice. For,

1. His own Mother, who stood before him upon that Line, was then alive.

2. He came from a Bastard branch, his Ancestor being the Bastard Son of *John of Gaunt*, during former Marriages on both sides. And tho' there was a legitimization (d) 20 R. 2. that neither did, nor was intended to extend to capacitate for the Royal Dignity : However, H. 7. is, in an Act of Parliament, called (e) *Natural Sovereign-Leige Lord*.

Certain it is, that he was never in his time, or after, Authoritatively declared, or accounted, King only *is Fact* : and

(a) Vid. the
Tear-Book,
1 H. 7. f. 4.

(b) Vid. the
Soll sup.
(c) Tear-Book
2 H. 7. f. 4. Ro.
Facto que il
grist sur lui le
royal dignite
destre Roy.
This said of
R. 3. and ap-
plied to H. 7.

(d) Rot. Parl.
20 R. pars 2.
m. 6. & 4. b. ff.
F. 36.

(e) Rot. Parl.
3. H. 7. m. 15.
The Attainder
of the E. of Ling.

and they who will take the distinction of *King in Right and in Fact*, from the last Parliamentary Declaration in this matter, before the *Revolution*, must hold; that till the restitution of the younger House, which had been settled the *Regnant Family* for three Reigns successively; all the Kings of the elder House were Kings only *in Fact*, but not of *Right*.

And yet it is not to be thence inferred, that while they of the elder House had possession, they were to be accounted *Usurpers*, for not standing first upon that Line which ought to have had the preference: But when any Prince of either branch, had Justice done to his Merits, who would not say, that he ought sooner to have been King?

H. 8th (a) came in under the *Authority of Parliament*, which had made H. 7th the Head of a new Succession, as the Crown had been Entail'd upon him and his Issue. And tho' H. 8th's Mother was Daughter to E. 4. whatever Dr. Brady (b) suggests, it has appeared above, that particular care was taken by H. 7th's Parliament, that the Crown should not be thought to descend by *proximity of Blood*; but that the Right of Succession was to be derived from *Parliamentary Authority*.

(a) Ar. 1059.

(b) *Introd. f. 391. next Heir to the Crown by proximity of Blood, as right Heir to his Mother.*

It is beyond contradiction, that in the judgment of H. 8th. and his *Parliaments*, the inheritance of the Crown was variable as *Parliaments* should determine; and that no Man could rightfully succeed, without such appointment.

By *Authority* (c) of his *Parliament* 25°. the Marriage with Katherine, Mother to Queen Mary, was declared void, and that with Ann, Mother to Queen Elizabeth, lawful, and the Children made inheritable, according to the course of *Inheritances*, and *laws of this Realm*; first to Males, then to Females: 'twas made *High-Treason* by Writing, Print, Deed, or Act, to attempt any thing to the prejudice of that Settlement; and the substance of an Oath was appointed (d) afterwards made more express, by another Statute, repealing all Oaths to the contrary, and engaging the Subjects, in maintaining that Act of Succession, to do against all manner of Persons, of what estate, degree, or condition soever be be.

(c) Stat. 25. H8.
6. 1.

(d) Stat. 26.
H. 8.

(a) 28 H. 8.
c. 7.

By (a) *Authority of Parliament*, 28 H. 8. the Marriages with Queen *Katharine* and Queen *Ann*, are declared *unlawful*, and the Children *illegitimate*; and the Crown is settled upon the issue of the Body of Queen *Jane*, E. 6th's Mother: for want of such issue, to such Person and Persons as the King should appoint by Virtue of the said Act. And it provides, that if any should attempt to succeed contrary to that Settlement, they should *lose* and *forfeit* all right Title and Interest, that they may claim to the Crown, as *Heirs by Descent*, or *otherwise*.

The reason for reserving an appointment to the King is very remarkable; because, as the words of the Statute are, 'If such *Heirs* should fail, as God defend, and no Provision made in your life, who should rule and govern this Realm; for lack of such *Heirs*, then this Realm, after your transitory life, shall be destitute of a lawful Governor: or else per case encumbered with such a Person, that would covet to aspire to the same, whom the Subjects of this Realm shall not find in their hearts to love, dread, and obediently serve, as their Sovereign Lord. And all offenders against that Act, their Abettors, Maintainers, Fautors, Counsellors, and Aiders, were to be deemed and adjudged *High Traitors* to the Realm.

According to which it is very evident,

1. That no Person would have had Right to succeed, who was not within the express limitations then made; or the future Provision by Virtue of the *Authority* of that *Parliament*.

2. If any Person should aspire to succeed from a pretended Right of *Proximity*, or the Settlement 1 H. 7. he would have been an *Incumbener*, or *Usurper*, of the Realm: unless the Subjects should find in their *Hearts*, or freely Consent, to serve him as their *Sovereign Lord*; that is, till he should be *elected King*.

3. That till the election of another King, there would be a *vacancy*; and whoever would pretend to be King till *Elected*, was punishable as a *Traitor to the Realm*.

(b) 28 H. 8.
c. 10.

By (b) *Authority of the same Parliament*, the *Illegitimations* of *Mary* and *Elizabeth* are continued; yet if the *King*, and Prince *Edward* should die without *Heirs* of their Bodies,

dies, the Crown was to go to the two *Ladies* successively: but their respective interests to determine, if they did not perform such Conditions as the King should appoint. And in case of failure of Issue, or in performance of the Conditions, *least the Realm should be destitute of a lawful Governor*, the Crown was to go as the King should appoint, in such manner as is there directed.

The (a) Settlement by Authority of *Parliament*, 28 H. 8. (a) 35 H. 8. was by the *same Authority* confirmed in substance 35^o, with a repetition of the inducement to place in the King a Power to appoint a Successor. But whoever should have been so appointed, or, for want of such appointment, *elect'd* by the *Estates* upon a vacancy, according to a Statute 25 H. 8. and that above cited 1 H. 7. would have become a *natural Lord*.

That what I have observed in Acts of *Parliament* in the time of H. 8. proceeded not from the prevalence of any Party, or compliance with the King's humour, but was the settled Judgment of the Learned of those times, how much soever divided in other matters, may appear by some passages between the Learned Sir *Thomas Moore*, who had been *Chancellor*, and *Ryche* then *Solicitor General*.

Sir *Thomas* being a Prisoner in the *Tower*, for not owning the King's Supremacy, *Ryche*, to perswade him to comply, used this argument: (b) *If*, says he, *it should be enacted, by Authority of Parliament, that I should be King, and that if any one should deny it, it should be Treason*, would you say that I were not King? For certain, adds he, *in my conscience this would be no offence, but you would be obliged to say so, and to take me for King: because your own consent was bound by the Act of Parliament*.

Sir *Thomas* Answers, it would be an offence, if he should say he were not King: *because he should be bound by the Act*; for that he might give his consent to that matter. This, he said, was a *light case*: But what if a *Parliament* should enact, That God should not be God? *Ryche* replies, It was impossible God should not be God. But, says he, because your case from God is sublime, I will propose to you this of an inferior Nature: You know our King is constituted Supream Head on Earth of the Church of *England*, and why

(b) *I see recorda de An.*
27 H. 8. sub
cust. u. r. r. m. q.
Capital. Justic.
& Attornat.
Gen. si in act.
tat. suis: auctoritate Parl. &c.
si diceret non,
&c. Vid. etiam
B. Burnet's
Hist. of the Ref.
1 Vol. f. 354.

why ought not you, *Master Moore*, so to affirm and take him, as well as in the case above, of my being made King? In which case you grant, that you would be obliged to affirm, and take me to be King. *Moore* says, these were not like cases, because (a) a King may be made by Parliament, and may be deprived by Parliament: to which Act, every Subject being present in Parliament, may give his consent: But to the case of the Primacy, he cannot be obliged, because to that he cannot give his consent in Parliament, &c. And it is observable, that tho' this is set forth in the Indictment against *Sir Thomas Moore*, it is only used as proof of his denying the Supremacy; without any aggravation from what he says of the Power of a Parliament in the present Question.

(a) *Quia Rex per Parl. fieri potest & per Parl. privari potest.*

(b) 1546.

(c) 1553.

(d) *Stat. 1 M. c. 2.*

(e) 1 and 2 P. M. c. 9.

E. 6. (b) succeeded H. 8. according to Parliamentary Settlements, without any formal recognition.

Nor was (c) *Mary*, his half Sister, who succeeded him, recognized, but her Parliament thought it for her Honour to take off her illegitimation, tho' that was not necessary to give her a Right to the Crown: nor did that Parliament use any expressions whereby they might seem to think so. When she came to marry *Philip* King of *Spain*, they fully asserted their rightful Power; all the marriage Articles being settled by (d) Authority of Parliament: By that, *Philip* is made an *English King*: (e) Another Parliament makes it forfeiture of Goods and Chattels, and perpetual Imprisonment the first time, and High-Treason the second, after a former Conviction, maliciously to maintain, that either of them ought not to enjoy the *Stile*, *Honour*, and *Kingly Name*.

(f) 1558.

(g) *Camden. Eliz. f. 12.*

Her Right was founded upon the express limitation to her by Authority of Parliament; and her Husband's not in (f) marrying her, but the consent of Parliament. Upon the same Right her half Sister *Elizabeth* succeeded her. By that good Providence which so often appear'd for her, *Mary* dying (g) while a Parliament was sitting; 'The States, with general consent, decreed *Elizabeth* to be proclaimed true and lawful Heir to the Crown, according to 'the Act of Succession, 35 H. 8.

And

And in the Act of Recognition, she is declared, (a) their *rightful and lawful Sovereign Leige Lady and Queen.* (a) Stat. 1 El. c. 3.

Soon after this, in a Letter written with her own hand (b) to Ferdinand the Emperor, she tells him that she by God's goodness succeeded her Sister, by right of Inheritance, and consent of her Subjects. (b) Camd.

Tho' she had sufficient opportunity to have procured an Act of Parliament to take off her illegitimacy; she seemed with wisdom to decline it.

1. Because the Authority of Parliament, under which she claimed, was more generally acknowledged in those days in relation to the Succession of the Crown, than in voiding or confirming Marriages: which has been held a Spiritual Matter.

2. To admit that she owed her Crown wholly to the Authority of Parliament, could not but be more popular, than to pretend to it by right of Blood.

In the (c) 8th and 9th of her Reign, the Lords addressed to her, that a Successor might be appointed in Parliament, leait God should call the Queen, *without certainty of Succession*: and affirm, that the not granting their request, would leave the Realm without Government. (c) Journals of Eliz. f. 105, 106, 107.

In the (d) 13th of her Reign it is made Treason during her Life, and forfeiture of Goods and Chattels after her death, to deny the Power of Parliament to limit and bind the Crown, and the Descent, Limitation, Inheritance, and Government thereof; and a penalty is set upon them, who should affirm, that *any, but the Issue of the Queen's Body, had right to succeed after her.* (d) Stat. 13 Eliz. c. 1.

For any one who expected the Crown, to pretend to it while she lived, is made *disability during life only*: but by a (e) subsequent Statute approving and explaining the *voluntary Association* of the Subjects that year, every such Person is excluded and disabled for ever. And tho' at (f) the time of giving judgment against Mary Queen of Scots, it was declared to be without prejudice to her Son; that could not hinder the operation of the Law upon that Statute: and I would gladly know how he could have any right, since he had no pretence as a special Heir, under any Parliamentary Settlement then in force. (e) Stat. 27 Eliz. (f) Camd. Eliz.

Upon

(a) Camden
f. 160.

An. 1571.

14 El.

(b) Coke's Ex-
onies f. 373.
380.

Upon the Queen's Treaty of Marriage 14^o of her Reign with the French King's Brother, she declared (a) that *she could not grant, without the assent of the States of the Realm, that he should be Crowned after the Marriage.*

In (b) an information in the *Exchequer* 21^o of her Reign, upon which judgment was given, with the advice of the Judges of both Benches, Lands are said, after the death of E 6. to have come to *Queen Mary*, as *his Sister and Heir, as in right of the Crown*; and so from her to *Queen Elizabeth*: In both which instances, according to the judgment of that time, the *rightful* Possession of the Crown made them Heirs to their respective Predecessors: notwithstanding the half Blood of both, and the continuing illegitimacy of one of them.

(c) An. 1602.

That (c) *J. 1.* could not rightfully succeed that *glorious Queen*, without an *election* by the *States* of the Kingdom, had been declared with sufficient Authority in her time, and in the time of *H. 8th.* and without such Declaration would appear by the observing how the Law stood, and was taken in all former times.

(d) Vid. Camd.
Eliz. & Wil-
son's Hist. of
J. 1.

But whatever right was ascribed to him after he got Possession; his Party here found it requisite to set (d) up a will or nomination of *Queen Elizabeth*, to facilitate his accession to the Throne.

Then with a new strain of Loyalty, *Judges, Lawyers, and Furies*, concurred in making attempts to prevent his coming to the Crown, Treason: the like of which, withal its Circumstances had not been known in any Age of this Monarchy. Tho' there had been Treason against *W. 1.* before his actual admittance to the Crown, it was, as has appeared above, after a National Settlement upon him by name: and this was the case of the unfortunate *Lady Jane*, and others who set her up against *Queen Mary*. Yet that complement to *J. 1.* was but suitable to the flattering Act of Recognition 1^o of his (e) Reign: according to the Preamble of which, immediately upon the decease of *Queen Elizabeth*, the Crown did by *Inherent Birth-right, and lawful, and undoubted Succession, descend and come to him*; as lineally descended from *Margaret, Daughter to H. 7.*

(e) Stat. 1. *J. 1.*

However,

However, that *Parliament* made no Law in the Matter, and, by good luck, left the constitution as they found it: for they made no Settlement of the Crown, only offered that recognition as *the first Fruits of their Faith to him, and his Royal Progeny, and Posterity for ever*; which, if it had been a Settlement, would amount to no more, than what had been usual in former times; for Parliaments to make a branch of the Royal Family, a new head of future Successions: but by this any one of the Issue, or Posterity, stood fair for an *election*.

Yet, possibly, the Parliament had not been so forward with these Fruits of their Loyalty, but for his Speech to 'em, wherein he says,

(a) Every King in a settled Kingdom is bound to observe the Paction made to his People by his Laws, in framing his Government agreeable thereto. And a King governing in a settled Kingdom, leaves to be a King, and degenerates into a Tyrant, as soon as he leaves off governing according to his Laws. In which case the King's conscience may speak to him, as the poor Widow said to Philip of Macedon; either govern according to your Law, or be no King.

(a) Vid. R. James his Works.

The Parliament take him at his word, and grafting upon it, say, (b) His Majesty hath vouchsafed to express many ways, how far it is, and ever shall be from his Royal and Sincere Care and Affection to the Subjects of England, to alter, or innovate, the Fundamental, and ancient Laws, Priviledges, and good Customs, of this Kingdom: whereby not only his Legal Authority, but the Peoples security, of Lands, Livings, and Priviledges, both in general, and particular, are preserved and maintained. And by the abolishing or altering of the which, it is impossible, but that present confusion will fall, upon the whole state and frame of this Kingdom. Where, in as modest terms as they could, they bid the King, at his peril, to violate the Fundamental Laws, on which his regal Authority depended, as well as their Rights and Priviledges.

(b) Stat. 1. J. 1.

But that King soon forgot upon what terms he had been received King; and, getting the leading Clergy on the side of his *Divine Right*, it pass'd at that time as the Doctrine of the Church of England.

While this fit of Loyalty lasted, C. 1. succeeded as by inherent *Birthright*, without any formal recognition: which then began to be thought needless. The occasions of the War between him and his Parliament, I shall not enquire into, but shall content my self with *Dean (a) Sherlock's* concession; who, as he will not dispute the lawfulness of resisting the King's Authority, and whether it were lawful for the Parliament to take Arms against the King, to defend the Laws, and Liberties of their Country; admits that they had a (b) right to keep the King within the boundaries of Law: these C. 1. apparently broke; and where there is no (c) Tribunal on Earth to appeal to, the *Dean* allows use of the Sword. But whatever was the consequence of that War, there has been no reason for the Pulpits to sound to loud, and long as they have done, with, denunciations of God's wrath, but, indeed, the Clergies, against this Kingdom, for what hapned in a War, for which the Parliament and People, who would not have carried the Point so far, as it unhappily went, are not to answer. C. 1. dying a deplorable death, the Nation was left without the exercise of any Legal Government, till the Restoration of C. 2. who was accounted King from the death of his Father.

But by what Law, or in what respect is worth enquiry, and will it appear.

1. That the supposed Maxim that the King never dies, is of very late and doubtful Authority, in comparison with those which shew that no Man was, or ought to be accounted King, till he had been formally recognized.

2. Yet tho' this should be true, when any Prince succeeds in vertue of a Settlement, made in the Ancestor's life time; it will not be so where there has been none, as was the case of C. 2.

3. If one should in the eye of Law be King immediately upon the death of an other, it would not follow that this would be by a strict right of descent; but that after the being admitted King, there should be a relation backwards, to prevent the loss of any rights belonging to the Crown: and thus it was plainly taken by the Chief Justices *Dyer* (e) and *Anderson*, who say, that the King who is *Heir, or Successor*, may write and begin his Reign, the same day that his *Progenitor, or Predecessor*, died. And

(a) Sermon before the House of Commons p. 6.

(b) Ib. They could pretend to no farther right &c.

(c) Vid. *Vindie. of the Case of Allegiance* p. 46, 47.

(d) *Finches description of the Common Law* ed. An. 1613.

(e) *Dyer* f. 165. *Anderson* f. 44.

And agreeably to this, it was the resolution of all the Judges of the *King's Bench* in *Queen Elizabeth's* time, that a saving to a *King and his Heirs*, shall go to a *Successor* of the Crown, tho' not Heir to that King.

That *J. 2.* made too great haste to succeed his Brother *C. 2.* now at least Men will be apt to believe: of whom I shall observe only in short,

1. That he was within no *Parliamentary Settlement* of the Crown then in force.

2. The best pretence *J. 2.* had of coming to the Crown without an immediate election, must have been the Settlement 1° *H. 7.* But no shadow of reason can be assigned, why the late Act of Settlement was not as *rightful*, and with as true Authority, as that 1° *H. 7.*

3. *J. 2.* being reconciled to the *Sea of Rome*, which is High Treason by (a) our Law, and for which he had been convicted in his Brother's time, if the Indictment had not been arbitrarily defeated, was as much disabled from succeeding to the Crown, as the Family of *George Duke of Clarence*, by reason of that Duke's attainder.

4. Admit the assuming the *Royal Dignity*, had purged the former disability; the continuing a Papist was a constant incapacity to be the Head of this Protestant Church, and Kingdom; rendering it impracticable for him to answer the end for which our Kings had been constituted.

5. He was never duly invested with the *Royal Dignity* (b) not having taken the appointed Coronation-Oath: which for his sake, was traiterously altered; with an omission of the Rights of the People, and an unjustifiable *Salvo* for Prerogative. Nor was he ever fully recognized.

6. By seizing the Customs, and raising Taxes, without Authority of Parliament, dispensing with the Laws of the Kingdom, raising and keeping a standing Army in the time of Peace, and the like enormities; he violated that constitution which should have made or kept him King: and if he ever was King, more than *Harold*, the Son of *Earl Godwin*, manifestly ceased to be King, before his abdication.

to the Prerogative of the Kings thereof, and the ancient custom of this Realm.

(a) Stat. 23.
Eliz. c. 1.

(b) Lib. Regalis penes Decanum West. & Sandford's account of the Coronation. Will you grow and keep &c. namely the Laws, and Customs, and Franchises granted to the Clergy, by the glorious King St. Edward your Predecessor according to the Laws of God, and the true profession of the Gospel, established in this Kingdom: and agreeing

7. However it may have been at his first leaving the Kingdom, without any other Government, than what, according to ancient Custom, fell upon the *States of the Kingdom*; he, having since discovered a settled intention to destroy the People of *England*, or the greater part of 'em, by a Foreign Power, with their Party here; according (a) to those *Casuits* who are most favourable to such rights as he has claimed; from the time, at least, of his manifesting such intention, he ceased to be King: and His present Majesty having been regularly declared King; the other is totally barred from all claim, and colour of pretence.

(a) Vid. Falkner's *Christian Loyalty* p. 526. Citing *Barklay*. &c.

How great a noise soever some make for him since his flight after their deserting him; the greatest sticklers for his supposed *rightful Authority*, being disappointed of their sanguine expectations, warmly opposed his exercise of those rights to which their servility had encouraged him: the very *Bishops*, who for his sake have set up for heads under him of a *separate Church*; not only disobeyed his (b) positive commands in matters which at other times, at least in things of the like nature, they would have contended to belong to his *Headship* of the Church; but (c) they would have limited his Power little less than the 19 Propositions to C. 1. which they had long seem'd to abhor.

(b) Concerning the Declaration of Indulgence.

(c) Vid. the *Bishops Address* to J. 2.

Some of their Party, if not themselves, joyn'd in soliciting his *present Majesty* to undertake our *Deliverance*: and a certain Person who would be thought never to have departed from their Principles, is said to have gone so far as to sign the invitation: tho' upon second thoughts he desired to have his name scratch'd out.

(d) Vid. the Form printed in *Reflections upon the Facultive Form of Prayer* p. 26. (e) 11 Dec. 1688.

The *Bishops* being required to sign (d) an abhorrence of that enterprize, absolutely refused it. Their *Archbishop* was one of them who (e) petitioned his *present Majesty* to take the Government upon him, before the *late King* left *England*: and *Non-assistance* to their *jure Divino* King, was become as *Catholic* Doctrine as *Non-resistance*.

During this time the designs of the Party were kept secret, but the People began to hope well of the Body of the *English Clergy*; believing them, by a wonderful providence, to be reformed in their Principles of Government, with which they had brought a scandal upon the *Reformation*.

But

But the *Convention* meeting, to provide for the Peace and Settlement of the Nation; it then appear'd, that the mighty Zcalots for the *Monarchy*, were only for setting up themselves; and in truth, would have no Sovereignty but in the *Church*, as they called their Faction: for as they would not have his present *Majesty* to be a King, but a *Regent*, or Officer for the interim, till the *late King*, should come to their terms: neither did they truly own him for their *King*; whom they neither would assist as Subjects, nor consult in choosing a new Government.

However, the Throne having, according to former Presidents, and the plain right of the Kingdom, been declared (a) *vacant*, upon the *late King's* breach of the *original contract*, and abdication; the *Lords and Commons*, reciting many particulars of his misgovernment, (b) *resolve* that *William and Mary, Prince and Princess of Orange, be, and be declared, King and Queen*: and make a farther Settlement of the Crown.

They having accepted the Crown, (c) the *Lords and Commons*, together with the *Mayor and Citizens of London*, and others of the *Commons* of this Realm, with full consent, publish and proclaim *William and Mary, Prince and Princess of Orange*, to be *King and Queen of England, France, and Ireland*; and in the Proclamation, own 'a *miraculous deliverance from Popery, and Arbitrary Power*; and that our preservation is due, next under God, to the resolution and conduct of *His Highness the Prince of Orange*, whom God hath chosen to be the *Glorious Instrument* of 'an inestimable Happiness, to us and our Posterity.

A *Parliament* called soon after, (d) declares, and enacts, that they do recognize and acknowledge, that Their *Majesties* are, and of Right ought to be, by the *Laws* of this Realm, their *Sovereign Liege Lord and Lady, King and Queen* of *England, &c.* in, and to whose *Princely Persons*, the *Royal State, Crown and Dignity* of the said *Realms*, with all *Honours, Prerogatives, &c.* are fully, rightfully, and entirely, *Invested, Incorporated, United, and Annexed*.

Notwithstanding which, many who have sworn to bear *Faith and true Allegiance* to *King William*, will be wiser than the Law, nor only declared by this *Act of Parliament*, but by

(a) Vid. the
Vote of the Com-
mons Jan. 28.
1689. and that
of the Lords
Feb. 6.

(b) Stat. 1.
W. M. Sef. 2.
cap. 2.

(c) Vid. the
Proclamation.

(d) Stat. 2.
W. M. Sef. 1.
cap. 1.

by several in former Reigns ; and with a gross Jesuitical evasion, without any colour of foundation in Law or Reason, pretend that they have sworn to *K. William* only as *King in Fact*; but that another was *rightful King* at the same time.

This groundless and wicked distinction, appears to have engaged some Men in an horrid and barbarous Plot against his Majesty's Person and Government, tho' they had sworn to be true and faithful to him : and it seems, by the case of Sir *John Perkins*, that neither he, nor his *Cassists*, thought the Oath to *King William* any departure from the *Allegiance* to *King James* : nor the design of *Assassinating King William*, any breach of the Oath to him.

Since therefore the deceit has taken rise from the supposition, that the late King continues King of Right, together with the general terms of the Oath, which are pretended to leave a latitude for this illegal and nonsensical supposition ; and an Oath more explicit has been artfully kept off ; a voluntary Declaration that his present Majesty, *King William*, is *Rightful and Lawful King of these Realms*, as it is fully warranted by the fundamental constitution of this Government, is, at this time, become a necessary duty ; when it is evident to the World, what they who are of a contrary Opinion, will act, as they have opportunity. But to engage to stand by and assist each other in the defence of His Majesty's Person and Government, is not more a consequence of the declaring him rightful and lawful King ; than it is implied in the Oath of Allegiance appointed by the Act of Parliament which settles the Crown ; and, however, the Common-Law Oath, and the legal sense of Allegiance, manifestly require it.

If any who have taken the Oath of *Allegiance*, to his present Majesty, scruple to *associate*, because of the declaring *His Majesty* to be *rightful and lawful King* ; it is evident, that they prevaricated when they swore. If they questioned the legality of entering into this before there was a positive Law for it ; 'tis certain, they have been little acquainted with the Common-Law Oath of Allegiance, and the warrantable Presidents of former times ; according to which, the (a) late Act, which enjoyns some to Sign the

(a) Stat. 7 & 8

W. 3. For the better Security of his Majesty's Royal Person and Government.

Association,

Association, not only gives it Sanction for the future; but, with exprefs relation to its being voluntarily enter'd into, by great numbers of His Majesty's Subjects, declares that *it is good and lawful.*

And any Man who impartially weighs what I have laid together from Records, and other Authentick Memorials of pass'd times, must own, that it is, with full and indubitable Authority, enacted, That ' if any person or persons ' shall maliciously, by *Writing, Printing, Preaching, Teaching,* or advifed speaking, utter, publish; or declare, ' that His *present Majesty* is not *the lawful and rightsful King of these Realms*; or that the late King James, or the ' *pretended Prince of Wales*, hath *any Rights or Title to the Crown* of these Realms; or that any other person or ' persons hath, or *have any right* or title to the same, ' otherwise than according to an Act of Parliament made ' in the first year of the Reign of His *present Majesty*, and ' *the late Queen*, Intituled, *An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown*; such person or persons, being thereof lawfully ' Convicted, shall incur the danger and penalty of *Præmunire.*

To imagine that after all this, the late King either is, or ought to be King, is to slight all Authorities, Ancient as well as Modern.

Which leads me to the Nature of our Lawyer's offence, who, before the Act for the Security of His Majesty's Person and Government, held the Signing the Association to be an Overt-Act of Treason against the King *de Jure*: which, as has appeared above, tends manifestly to depose and unking His *present Majesty*, as in the Eye of the Law there is but *one King*, and he is the only King *de Jure*. *Proof of the 6th general head.*

Besides, this Gentleman admits, That by the Statute 11 H. 7. Allegiance is due to a King *in Fact*, and that the Oath of Allegiance was to be taken to him: nor can pretend that there ever, till of late, was any other Oath but what expressly obliged to the Defence of the *King and Kingdom* against all Men: therefore in consequence of his own Notion he must grant, that to contend that there may be Treason against any other but the King for the

time

time being, is to suppose two contrary Allegiances; and therein to depart from that Allegiance which was due, even by his own interpretation of the Statute 11 H. 7. But it being evident, that by that Statute, and the whole course of the Common Law, there is but *one King*, I need not tell him the Crime of publishing a written Opinion, manifestly importing an endeavour to Depose him.

If this had been delivered only in Words, it is well known who used his Oratory to make words alone Treason, within the Statute 25 E. 3. for which I may refer him to the Trial of the now Earl of *Macclesfield*, in the beginning of the late King's Reign: and to the Author of the *Magistracy and Government Vindicated*.

But as the Opinion was written; he may well know from what late Authority, *Scrivere est agere*, is become a Maxim, or Proverbial.

(a) *Yelverton*,
f. 107. 5 f. 1.

(b) *1 Rolls*,
f. 185.

(c) *Barks MS.*
p. res incipsum
P. f. 13 f. 1.

Nor can he deny the Words to be within the reason of what the Court held (a) in *Black Flower's Case*, of a Man's affirming the King to be a *bastard*; or that *another had better title to the Crown: because it may draw the Subjects from their Allegiance, and beget Mutiny in the Realm*: or *Owen's Case*, of declaring it lawful to kill the King being (b) Excommunicated by the Pope: both which, not to mention more of the like kind, were adjudged *High-Treason*. According to the Print of the later Case, it would seem that Words alone made the Treason; but it appears, by a (c) *MS. Report* of one who had been *Attorney General*, and afterwards *Chief Justice* of the *Common-Pleas*, that *Owen's* Subscribing his Confession of what he had publicly declared, was given in Evidence as the *Overt-Act*.

But if any *Lawyer*, who has labour'd to make Treason of Words alone; or Writing alone, without Publication; or Signing an *Association* to defend the King for the *time being*, against one who had been King, but is not; should appear, not only to have Written, or Signed, the Opinion above, after a Discourse shewing to what Persons it related; but to have publish'd this; and to have Solicited Men not to Subscribe the *Association*, upon those, or the like topics; should he be Convicted of *High-Treason* against our Sovereign Lord the King; it would be difficult not to apply that of the Poet,

— *Nec lex est justior ulla,*

Quam necis artifices arte perire sua.

None can the Justice of that Law deny,

By which, who strain'd it against others, dye.

